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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 11, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

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Tuesday, July 17, 2012

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1485

Market Access Program

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Correcting amendments.

SUMMARY: The U.S. Department of Agriculture published a final rule in the **Federal Register** on May 17, 2012 (77 FR 29474). This document corrects the final regulations by revising these sections.

DATES: *Effective date:* July 17, 2012.

FOR FURTHER INFORMATION CONTACT: Mark Slupek, 202–720–1169, U.S. Department of Agriculture, Foreign Agricultural Service, Office of Trade Programs, Program Operations Division; or by phone: (202) 720–4327; or by fax: (202) 720–9361; or by email: *podadmin@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: As published, the final regulation contained an error which may prove to be misleading and need to be clarified.

List of Subjects in 7 CFR Part 1485

Agricultural commodities, Exports.

Accordingly, 7 CFR Part 1485 is corrected by making the following correcting amendment:

PART 1485—GRANT AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR U.S. AGRICULTURAL COMMODITIES

■ 1. The authority citation for 7 CFR part 1485 continues to read as follows:

Authority: 7 U.S.C. 5623, 5662–5663 and sec. 203, 402–403, Pub. L. 95–501, as amended, 92 Stat 1685 and sec. 1302, Pub. L. 103–66, 107 Stat. 330.

■ 2. Revise the part heading for part 1485 to read as set forth above.

■ 3. Revise paragraph (b) of § 1485.19 to read as follows:

§ 1485.19 Advances.

* * * * *

(b) *Exception.* A MAP Participant for generic promotion activities may request an advance of MAP funds from CCC, provided the MAP Participant meets the criteria for advance payments set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, and 3019). CCC will not approve any request for an advance submitted later than 3 months after the end of a MAP Participant's program year. At any given time, total payments advanced shall not exceed 40 percent of a MAP Participant's approved generic activity budget for the program year. CCC will not advance funds to a MAP Participant for brand promotion activities. When approving a request for an advance, CCC may require the MAP Participant to carry adequate fidelity bond coverage when the absence of such coverage is considered to create an unacceptable risk to the interests of the MAP. Whether an ''unacceptable risk'' exists in a particular situation will depend on a number of factors, such as, for example, the Participant's history of performance in MAP; the Participant's perceived financial stability and resources; and any other factors presented in the particular situation that may reflect on the Participant's responsibility or the riskiness of its activities.

* * * * *

Dated: June 7, 2012.

Suzanne E. Heinen,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2012–15195 Filed 7–16–12; 8:45 am]

BILLING CODE 3410–10–P

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 404

[EXIM–OIG–2012–0010]

RIN 3048–AA02

Privacy Act of 1974: Implementation of Exemptions; Export-Import Bank of the United States Office of Inspector General—EIB–35—Office of Inspector General Investigative Records

AGENCY: Office of the Inspector General, Export-Import Bank of the United States.

ACTION: Final rule.

SUMMARY: The Export-Import Bank of the United States (hereafter known as ''Ex-Im Bank'') is issuing a final rule to exempt portions of a system of records entitled ''EIB–35—Office of Inspector General Investigative Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: The final rule is effective August 16, 2012.

FOR FURTHER INFORMATION CONTACT: Osvaldo Gratacos, Ex-Im Bank, Office of Inspector General, 811 Vermont Avenue NW., Rm. 976, Washington, DC 20571 or by telephone (202) 565–3908 or facsimile (202) 565–3988.

SUPPLEMENTARY INFORMATION:

Background

The Ex-Im Bank published a notice of proposed rulemaking in the **Federal Register**, 77 FR 27140 (May 9, 2012), proposing to exempt portions of a system of records entitled ''EIB–35—Office of Inspector General Investigative Records'' and held by the Ex-Im Bank Office of Inspector General (OIG), from one or more provisions of the Privacy Act of 1974, 5 U.S.C. 552a. The exemptions are necessary in order for Ex-Im Bank OIG to carry out its investigative responsibilities pursuant to the Inspector General Act of 1978, as amended. The Ex-Im Bank OIG published the system of records notice in the **Federal Register**, 77 FR 26755 (May 7, 2012), and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and the System of Records Notice (SORN).

Public Comments

Ex-Im Bank did not receive any comments on the SORN or the NPRM. Ex-Im Bank will implement the rulemaking as proposed.

List of Subjects in 12 CFR Part 404

Information disclosure.

For the reasons stated in the preamble, Ex-Im Bank amends chapter IV of Title 12, Code of Federal Regulations, as follows:

PART 404—INFORMATION DISCLOSURE

■ 1. The authority citation for part 404 continues to read as follows:

Authority: 5 U.S.C. 552 and 552a. Section 404.7 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235. Section 404.21 also issued under 5 U.S.C. 552a note. Subpart C also issued under 5 U.S.C. 301, 12 U.S.C. 635.

■ 2. Add § 404.24 to Subpart B to read as follows:

§ 404.24 Exemptions: EIB–35—Office of Inspector General Investigative Records.

(a) *Criminal Law Enforcement*—(1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(j)(2), Ex-Im Bank hereby exempts the system of records entitled ''EIB–35—Office of Inspector General Investigative Records'' from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d)(1) through (4), (e)(1) through (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f), and (g) because the system contains information pertaining to the enforcement of criminal laws. ''EIB–35—Office of Inspector General Investigative Records'' is maintained by the Ex-Im Bank Office of Inspector General (''OIG'' or ''Ex-Im Bank OIG.'')

(2) *Reasons for exemption.* The reasons for asserting this exemption are:

(i) Disclosure to the individual named in the record pursuant to 5 U.S.C. 552a(c)(3), (c)(4), or (d)(1) through (4) could seriously impede or compromise the investigation by alerting the target(s), subjecting a potential witness or witnesses to intimidation or improper influence, and leading to destruction of evidence. Disclosure could enable suspects to take action to prevent detection of criminal activities, conceal evidence, or escape prosecution.

(ii) Application of 5 U.S.C. 552a(e)(1) is impractical because the relevance of specific information might be established only after considerable analysis and as the investigation progresses. Effective law enforcement requires the OIG to keep information that may not be relevant to a specific OIG investigation, but which may provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the OIG and/or other agencies.

(iii) Application of 5 U.S.C. 552a(e)(2) would be counterproductive to the performance of a criminal investigation because it would alert the individual to the existence of an investigation. In any investigation, it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation or prosecution.

(iv) Application of 5 U.S.C. 552a(e)(3) could discourage the free flow of information in a criminal law enforcement inquiry.

(v) The requirements of 5 U.S.C. 552a(e)(4)(G) and (H) and (f) would be counterproductive to the performance of a criminal investigation. To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or to grant access to an investigative file could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity or confidential sources, reveal confidential information supplied by these sources and disclose investigative techniques and procedures. Nevertheless, Ex-Im Bank OIG has published notice of its notification, access, and contest procedures because access may be appropriate in some cases.

(vi) Although the OIG endeavors to maintain accurate records, application of 5 U.S.C. 552a(e)(5) is impractical because maintaining only those records that are accurate, relevant, timely, and complete and that assure fairness in determination is contrary to established investigative techniques. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses.

(vii) Application of 5 U.S.C. 552a(e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(viii) The provisions of subsection (g) do not apply to this system if an exemption otherwise applies.

(b) *Other Law Enforcement*—(1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(2), Ex-Im Bank hereby exempts the system of records entitled ''EIB–35—Office of Inspector General Investigative Records'' from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) for the same reasons as stated in paragraph (a)(2) of this section, that is, because the system contains investigatory material compiled for law enforcement purposes other than material within the scope of subsection 552a(j)(2).

(2) *Reasons for exemption.* The reasons for asserting this exemption are because the disclosure and other requirements of the Privacy Act could substantially compromise the efficacy and integrity of OIG operations. Disclosure could invade the privacy of other individuals and disclose their identity when they were expressly promised confidentiality. Disclosure could interfere with the integrity of information which would otherwise be subject to privileges (see, e.g., 5 U.S.C. 552(b)(5)), and which could interfere with other important law enforcement concerns (see, e.g., 5 U.S.C. 552(b)(7)).

(c) *Federal Civilian or Contract Employment*—(1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(5), Ex-Im Bank hereby exempts the system of records entitled ''EIB–35—Office of Inspector General Investigative Records'' from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) because the system contains investigatory material compiled for the purpose of determining eligibility or qualifications for federal civilian or contract employment.

(2) *Reasons for exemption.* The reasons for asserting this exemption are the same as described in paragraph (a)(2) of this section.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–17382 Filed 7–16–12; 8:45 am]

BILLING CODE 6690–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0266; Directorate Identifier 2011–NM–061–AD; Amendment 39–17119; AD 2012–14–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318, A319, and A320 series airplanes. This AD was prompted

by reports of unsuccessful slide deployments during scheduled deployment tests, and failed functional tests of the release travel of the slide release mechanism. This AD requires inspecting the off-wing slide release cables on the left- and right-hand sides to determine whether a certain part number is installed, and replacement if necessary. We are issuing this AD to prevent non-availability of left- or right-hand off-wing exit slides that could impair emergency evacuation of the passengers and flightcrew, and could result in personal injuries.

DATES: This AD becomes effective August 21, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 21, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a Notice of Proposed Rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 16, 2012 (77 FR 15636). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Several operators reported unsuccessful slide deployments during scheduled deployment tests and/or failed functional tests of the release travel of the slide release mechanism.
>
> Investigations revealed deformation of the PTFE (Teflon) ball guide strip of the release cable, Part Number (P/N) L32A319–160–001. In such a situation the travel of the cable could be insufficient to open the valve when opening the exit, thereby reducing the gas flow from the reservoir to the off-wing slide in automatic or manual mode. As a result, the aspirator will not ingest sufficient ambient air for slide inflation.
>
> This condition, if not corrected, could lead to the non-availability of LH [left-hand] and/or RH [right-hand] off-wing exit slides for evacuation that would impair emergency evacuation of the aeroplane occupants, possibly resulting in personal injuries.
>
> For the reasons described above, this [EASA] AD requires the identification [inspection] and replacement of both Left hand (LH) and Right Hand (RH) off-wing slide release cables P/N L32A319–160–001 with P/N L32A320–180, which have precise stainless steel ball bearing stripes instead of stamped PTFE stripes.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Support for the Proposed AD (77 FR 15636, March 16, 2012)

United Airlines has no objections to the content of the proposed rule (77 FR 15636, March 16, 2012).

Request To Refer to Revised Service Bulletin

Airbus requested that we revise the NPRM (77 FR 15636, March 16, 2012) to refer to Airbus Mandatory Service Bulletin A320–53–1227, Revision 05, dated March 27, 2012. Airbus also requested that we give credit for actions done using Airbus Mandatory Service Bulletin A320–53–1227, Revision 01, dated May 31, 2010; Revision 02, dated March 10, 2011; Revision 03, dated July 28, 2011; and Revision 04, dated February 14, 2012.

We agree with the request. We have updated paragraphs (g) and (m)(5) of this AD to refer to Airbus Mandatory Service Bulletin A320–53–1227, Revision 05, dated March 27, 2012. We have also revised paragraph (j)(1) of this AD to allow credit for actions done using Airbus Mandatory Service Bulletin A320–53–1227, Revision 01, dated May 31, 2010; Revision 02, dated March 10, 2011; Revision 03, dated July 28, 2011; and Revision 04, dated February 14, 2012. We have re-identified paragraphs (j)(2) through (j)(6) of the NPRM (77 FR 15636, March 16, 2012) as paragraph (j)(2) in this AD, and indicated that the service information in paragraph (j)(2) of this AD provides credit for the actions specified in paragraph (h) of this AD.

Additional Change Made to This AD

Paragraph (g) of the NPRM (77 FR 15636, March 16, 2012) inadvertently referred to paragraph (l) of the NPRM, rather than paragraph (k) of the NPRM, as the exception to the proposed requirements. We have changed paragraph (g) of this AD to refer to paragraph (k) of this AD for the exception.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously except for minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 15636, March 16, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 15636, March 16, 2012).

Costs of Compliance

We estimate that this AD will affect 694 products of U.S. registry. We also estimate that it will take about 39 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $5,750 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,291,110, or $9,065 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 15636, March 16, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–14–05 Airbus: Amendment 39–17119. Docket No. FAA–2012–0266; Directorate Identifier 2011–NM–061–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective August 21, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; and Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; certificated in any category; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 28: Fuel tanks; 53: Fuselage.

(e) Reason

This AD was prompted by reports of unsuccessful slide deployments during scheduled deployment tests, and failed functional tests of the release travel of the slide release mechanism. We are issuing this AD to prevent non-availability of left- or right-hand off-wing exit slides that could impair emergency evacuation of the passengers and flightcrew, and could result in personal injuries.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection and Modification

Except as provided by paragraph (k) of this AD, within 36 months after the effective date of this AD, inspect the off-wing slide release cables on the left- and right-hand sides to determine whether part number (P/N) L32A319–160–001 is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the off-wing slide release cables can be conclusively determined from that review. If any off-wing slide release cable has P/N L32A319–160–001, before further flight, replace with a new off-wing slide release cable having P/N L32A320–180, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–53–1227, Revision 05, dated March 27, 2012.

(h) Optional Modification

Installation of a shorter off-wing slide release cable having P/N L32A319–160–002 with relocated inflation bottle during installation of the additional center tank, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraphs (h)(1) through (h)(4) of this AD, is acceptable for compliance with the requirements of paragraph (g) of this AD.

(1) Airbus Service Bulletin A320–28–1118, Revision 03, including Appendix 1, dated May 12, 2009.

(2) Airbus Service Bulletin A320–28–1132, Revision 04, including Appendices 1 and 2, dated February 1, 2010.

(3) Airbus Service Bulletin A320–28–1145, Revision 01, including Appendix 01, dated April 27, 2007.

(4) Airbus Service Bulletin A320–28–1154, Revision 01, dated April 7, 2008.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install an off-wing slide release cable having P/N L32A319–160–001 on any airplane.

(j) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g) of this AD, if installation of off-wing slide release cables having P/N L32A320–180 was done before the effective date of this AD using the service bulletin identified in paragraphs (j)(1)(i) through (j)(1)(v) of this AD.

(i) Airbus Service Bulletin A320–53–1227, dated March 24, 2010.

(ii) Airbus Service Bulletin A320–53–1227, Revision 01, dated May 31, 2010.

(iii) Airbus Mandatory Service Bulletin A320–53–1227, Revision 02, dated March 10, 2011.

(iv) Airbus Mandatory Service Bulletin A320–53–1227, Revision 03, dated July 28, 2011.

(v) Airbus Mandatory Service Bulletin A320–53–1227, Revision 04, dated February 14, 2012.

(2) This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (j)(2)(i) through (j)(2)(v) of this AD.

(i) Airbus Service Bulletin A320–28–1132, dated October 13, 2004.

(ii) Airbus Service Bulletin A320–28–1132, Revision 01, dated October 12, 2006.

(iii) Airbus Service Bulletin A320–28–1132, Revision 02, dated November 12, 2008.

(iv) Airbus Service Bulletin A320–28–1132, Revision 03, dated October 5, 2009.

(v) Airbus Service Bulletin A320–28–1145, dated February 28, 2006.

(k) Exception

Provided that off-wing slide release cables have not been replaced with a slide release cable having P/N L32A319–160–001, airplanes having Airbus modification 150811, 26138, 37856, or 39673 installed in production are in compliance with the requirements of paragraph (g) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC

approval letter must specifically reference this AD.

(*2) Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(m) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0015, dated January 31, 2011, and the service information specified in paragraphs (m)(1) through (m)(5) of this AD, for related information.

(1) Airbus Service Bulletin A320–28–1118, Revision 03, including Appendix 1, dated May 12, 2009.

(2) Airbus Service Bulletin A320–28–1132, Revision 04, including Appendices 1 and 2, dated February 1, 2010.

(3) Airbus Service Bulletin A320–28–1145, Revision 01, including Appendix 01, dated April 27, 2007.

(4) Airbus Service Bulletin A320–28–1154, Revision 01, dated April 7, 2008.

(5) Airbus Mandatory Service Bulletin A320–53–1227, Revision 05, dated March 27, 2012.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the Incorporation by Reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise.

(i) Airbus Mandatory Service Bulletin A320–53–1227, Revision 05, dated March 27, 2012.

(ii) Reserved

(3) If you accomplish the optional actions specified by this AD, you must use the following service information to perform those actions, unless the AD specifies otherwise.

(i) Airbus Service Bulletin A320–28–1118, Revision 03, including Appendix 1, dated May 12, 2009.

(ii) Airbus Service Bulletin A320–28–1132, Revision 04, including Appendices 1 and 2, dated February 1, 2010.

(iii) Airbus Service Bulletin A320–28–1145, Revision 01, including Appendix 01, dated April 27, 2007.

(iv) Airbus Service Bulletin A320–28–1154, Revision 01, dated April 7, 2008.

(4) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(5) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 29, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–16885 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0715; Directorate Identifier 2012–SW–039–AD; Amendment 39–17122; AD 2012–14–08]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters. This AD requires inspecting the main gearbox (MGB) for a crack. This AD is prompted by a crack in the cored passage of the MGB housing, which may be indicated by oil on the housing. These actions are intended to detect a crack in the MGB housing, which could result in loss of oil, failure of the MGB, and subsequent loss of control of the helicopter.

DATES: This AD becomes effective August 1, 2012.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of August 1, 2012.

We must receive comments on this AD by September 17, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562–4409; email address *tsslibrary@sikorsky.com;* or at *http://www.sikorsky.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; telephone (718) 238–7761; email *michael.schwetz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with

FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

This AD is prompted by an incident in which a crack in the MGB housing, in the cored passage area adjacent to the scissor bracket mount, allowed a measurable amount of oil to leak from the MGB. This condition, if not corrected, could result in loss of oil, failure of the MGB and subsequent loss of control of the helicopter.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other helicopters of the same type design.

Related Service Information

Sikorsky has developed inspection procedures and issued Sikorsky S–92 Alert Service Bulletin (ASB) No. ASB 92–63–032 Basic Issue, dated December 22, 2011 (ASB 92–63–032), to detect a crack in the MGB by inspecting the area of the MGB housing, as indicated in Figure 1 of ASB 92–63–032, for the presence of oil. We reviewed ASB 92–63–032, which describes procedures to inspect the MGB for indications of oil leakage. If indications of oil leakage are found, ASB 92–63–032 specifies cleaning the inspection area, performing a ground run and confirming the source of the leakage by using a specified ultraviolet light and repeating the visual inspection using a 10X magnifying glass. If any oil leakage is found, the ASB 92–63–032 states that the MGB is not to be used for further flight until direction is provided by Sikorsky. ASB 92–63–032 also requires a recurrent inspection for any oil leakage, and references Sikorsky Maintenance Manual Temporary Revision No. 63–50, (TR 63–50), and Temporary Revision No. 5–104 (TR 5–104), both dated December 22, 2011. TR 63–50 adds the MGB inspection procedures to the aircraft maintenance manual, and TR 5–104 adds the MGB inspection requirement to the ''Before First Flight of the Day Checklist.'' TR 5–104 also specifies inspecting the MGB before the first flight of the day, not to exceed 10 flight hours between inspections.

Since issuing ASB 92–63–032, Sikorsky has issued S–92 ASB No. ASB 92–63–034 Basic Issue, dated March 8, 2012 (ASB 92–63–034), which describes procedures to detect cracks in the MGB main module assembly with a one-time eddy-current and fluorescent-penetrant inspection. ASB 92–63–034 also states that upon compliance with the eddy-current inspection ''the daily visual inspection implemented by ASB 92–63–032 is waived.''

AD Requirements

This AD requires repetitively inspecting the main gearbox with a 10X magnifying glass for a crack. If there is a crack, or if any oil leakage is detected, this AD requires replacing the MGB with an airworthy MGB. This AD also provides for a one-time eddy-current inspection of the main module assembly of the MGB as an optional terminating action.

Differences Between This AD and the Service Information

The ASB requires inspecting for any oil leakage, while this AD requires inspecting for a crack, which may be indicated by the presence of oil leakage. The ASB requires sending photographic documentation of any oil leakage to Sikorsky; this AD does not. The ASB also requires contacting Sikorsky for further direction if any oil leakage is confirmed; this AD requires replacing any affected MGB with an airworthy MGB.

Costs of Compliance

We estimate that this AD will affect 16 helicopters of U.S. Registry. We estimate that operators may incur the following costs, at an average labor rate of $85 per hour, in order to comply with this AD. Inspecting the MGB will require one work hour for a total cost to the operator of $85 and a cost to the entire U.S. fleet of $1,360 per inspection cycle. Performing the eddy-current inspection of the MGB will require 2 work hours for a total cost to the operator of $170 and a cost to the entire U.S. fleet of $2,720. If cracked, we estimate replacing a MGB will require 112 work hours and required parts will cost $260,000, for a total cost to the operator of $269,520.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the required corrective actions must be accomplished within 10 hours time-in-service, and repeated on a daily basis. These helicopters are primarily used in the offshore industry, and this is a very short compliance time for this industry.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2012–14–08 Sikorsky Aircraft Corporation: Amendment 39–17122; Docket No. FAA–2012–0715; Directorate Identifier 2012–SW–039–AD.

(a) Applicability

This AD applies to Model S–92A helicopters, serial numbers 920006 through 920155, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in the main gearbox (MGB) housing cored oil passage. This condition could result in loss of oil, failure of the MGB, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective August 1, 2012.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 10 hours time-in-service (TIS) or 15 days, whichever occurs earlier, and thereafter before the first flight of each day, not to exceed 10 hours TIS between inspections, accomplish the following:

(1) Clean and inspect, using a 10x or higher power magnifying glass, the MGB housing for a crack in the inspection area shown in Figure 1 of Sikorsky S–92 Alert Service Bulletin No. ASB 92–63–032 Basic Issue, dated December 22, 2011.

Note to paragraph (e)(1) of this AD: A crack may be indicated by the presence of oil in the inspection area of the MGB housing.

(2) If there is a crack, before further flight, replace the MGB with an airworthy MGB.

(3) Compliance with the one-time eddy-current inspection of the main module assembly of the MGB in accordance with the Accomplishment Instructions, paragraph 3.C, of Sikorsky S–92 ASB No. ASB 92–63–034 Basic Issue, dated March 8, 2012, by a technician certified to non-destructive testing Level II or greater is an optional terminating action for the inspection requirements of this AD.

(f) Special Flight Permits

Special flight permits will not be issued.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Schwetz, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; telephone (718) 238–7761; email *michael.schwetz@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6320: Main Rotor Gearbox.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Sikorsky S–92 Alert Service Bulletin No. ASB 92–63–032 Basic Issue, dated December 22, 2011;

(ii) Sikorsky S–92 Alert Service Bulletin No. ASB 92–63–034 Basic Issue, dated March 8, 2012.

(3) For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562–4409; email address *tsslibrary@sikorsky.com;* or at *http://www.sikorsky.com*.

(4) You may review copies of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(5) You may also review copies of this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Fort Worth, Texas, on July 2, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–16944 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0677; Directorate Identifier 2012–NM–105–AD; Amendment 39–17114; AD 2012–13–12]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Model G–IV, GIV–X, GV, and GV–SP airplanes. This AD requires measuring to determine paint thickness on the flight control surfaces and corrective actions if necessary, and revising the Airplane Flight Manual (AFM). This AD was prompted by reports of failure to inspect or document the paint thickness on flight controls (ailerons, rudder, elevator), potentially having a negative impact on the flutter characteristics of the airplane. We are issuing this AD to detect and correct paint thickness on flight controls, which could result in loss of control of the airplane due to flutter.

DATES: This AD is effective August 1, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 1, 2012.

We must receive comments on this AD by August 31, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications

Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Michael Cann, Senior Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; phone 404–474–5548; fax 404–474–5605; email: *michael.cann@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received reports of failure to inspect or document the paint thickness on flight controls (ailerons, rudder, elevator), potentially having a negative impact on the flutter characteristics of the airplane. Excessive paint thickness will affect the balance moment of the flight control surface. This condition, if not corrected, could result in loss of control of the airplane due to flutter.

Relevant Service Information

We reviewed the following service information, which describes procedures for measuring the paint thickness on both sides of each flight control surface (ailerons, rudder, and elevator) and corrective actions if necessary. The customer bulletins also describe procedures for revising the AFM to advise the flightcrew to not exceed a certain altitude until corrective actions have been accomplished. Corrective actions include removing the flight control surface and rebalancing, stripping, repainting with an average thickness less than 5.0 mils, and sanding/buffing down to 5.0 mils or less and re-measuring thicknesses (not recommended on surfaces with averages exceeding 7.0 mils).

- For Model G–IV airplanes: Gulfstream IV Customer Bulletin 223, including Part I and Part II Service Reply Cards, dated March 23, 2012, which includes Gulfstream GIV Airplane Flight Manual Supplement GIV–2012–01, dated March 13, 2012.
- For Model GV airplanes: Gulfstream V Customer Bulletin 196, including Part I and Part II Service Reply Cards, dated March 23, 2012, which includes Gulfstream GV Airplane Flight Manual Supplement GV–2012–01, dated March 13, 2012.
- For Model GIV–X airplanes: Gulfstream G450 Customer Bulletin 140, including Part I and Part II Service Reply Cards, dated March 23, 2012, which includes Gulfstream G450/G350 Airplane Flight Manual Supplement G450–2012–01, dated March 13, 2012.
- For Model GV–SP airplanes: Gulfstream G550 Customer Bulletin 121, including Part I and Part II Service Reply Cards, dated March 23, 2012, which includes Gulfstream G550 Airplane Flight Manual Supplement G550–2012–01, dated March 13, 2012; and Gulfstream G550 EASA Airplane Flight Manual Supplement EASA–G550–2012–01, dated March 14, 2012.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and the Service Information.'' This AD also requires sending the measurement and corrective action results to Gulfstream Aerospace Corporation.

Differences Between the AD and the Service Information

The customer bulletins specified in paragraph (g) of this AD incorporate the airplane flight manual supplement (AFMS) as an on-condition action. This AD requires operators to incorporate the AFMS within 20 days after the effective date of this AD. We have determined that this action is necessary to address the identified unsafe condition.

Although the customer bulletins specified in paragraph (g) of this AD specify that operators may contact the manufacturer for disposition of certain repair conditions, this AD requires operators to repair those conditions in accordance with a method approved by the FAA.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule, because we received reports of failure to inspect or document the paint thickness on flight controls (ailerons, rudder, elevator), potentially having a negative impact on the flutter characteristics of the airplane. Excessive paint thickness will affect the balance moment of the flight control surface. This condition, if not corrected, could result in loss of control of the airplane due to flutter. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2012–0677 and Directorate Identifier 2012–NM–105–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 33 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Measurement	5 work-hours × $85 per hour = $425	$0	$425	$14,025
Airplane flight manual revision	1 work-hour × $85 per hour = $85	0	85	2,805

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

According to the manufacturer, the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2012–13–12 Gulfstream Aerospace Corporation: Amendment 39–17114; Docket No. FAA–2012–0677; Directorate Identifier 2012–NM–105–AD.

(a) Effective Date

This AD is effective August 1, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category.

(1) Gulfstream Aerospace Corporation Model G–IV airplanes, serial numbers 1265, 1286, 1298, 1301, 1347, 1372, 1378, 1380, 1423, 1458, and 1497.

(2) Gulfstream Aerospace Corporation Model GIV–X airplanes, serial numbers 4064, 4151, 4192, 4194, 4199, and 4214.

(3) Gulfstream Aerospace Corporation Model GV airplanes, serial numbers 612, 630, and 691.

(4) Gulfstream Aerospace Corporation Model GV–SP airplanes, serial numbers 5038, 5079, 5223, 5227, 5237, 5240, 5245, 5246, 5252, 5258, 5261, 5265, 5267, 5283, 5290, 5293, 5294, 5302, 5307, 5311, 5318, and 5320.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by reports of failure to inspect or document the paint thickness on flight controls (ailerons, rudder, elevator), potentially having a negative impact on the flutter characteristics of the airplane. We are issuing this AD to detect and correct paint thickness on flight controls, which could result in loss of control of the airplane due to flutter.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Airplane Flight Manual Revision

Within 20 days after the effective date of this AD, revise the airplane flight manual (AFM) by incorporating the applicable airplane flight manual supplement (AFMS) specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD. After accomplishing the actions in paragraph (h) of this AD, and all applicable corrective actions required by paragraph (i) of this AD, the AFMS specified in paragraph (g) of this AD may be removed from the AFM.

(1) For Model G–IV airplanes: Gulfstream IV Customer Bulletin 223, including Part I and Part II Service Reply Cards, dated March 23, 2012, which includes Gulfstream GIV Airplane Flight Manual Supplement GIV–2012–01, dated March 13, 2012.

(2) For Model GV airplanes: Gulfstream V Customer Bulletin 196, including Part I and Part II Service Reply Cards, dated March 23, 2012, which includes Gulfstream GV Airplane Flight Manual Supplement GV–2012–01, dated March 13, 2012.

(3) For Model GIV–X airplanes: Gulfstream G450 Customer Bulletin 140, including Part I and Part II Service Reply Cards, dated March 23, 2012, which includes Gulfstream G450/G350 Airplane Flight Manual Supplement G450–2012–01, dated March 13, 2012.

(4) For Model GV–SP airplanes: Gulfstream G550 Customer Bulletin 121, including Part I and Part II Service Reply Cards, dated March 23, 2012, which includes Gulfstream G550 Airplane Flight Manual Supplement G550–2012–01, dated March 13, 2012; and Gulfstream G550 EASA Airplane Flight Manual Supplement EASA–G550–2012–01, dated March 14, 2012.

(h) Measurement

At the applicable compliance time specified in paragraph (h)(1) or (h)(2) of this AD, measure the paint thickness on both sides of the flight control surfaces, in accordance with the Accomplishment Instructions of the applicable customer bulletin identified in paragraph (g) of this AD. If average paint thickness is equal to or less than 5.0 mils; or if average paint thickness is greater than 5.0 mils, but equal to or less than the serial number specific allowances provided in table 4 of the applicable customer bulletin identified in paragraph (g) of this AD: The AFMS specified in paragraph (g) of this AD may be removed from the AFM.

(1) For Model GIV–X, GV, and GV–SP airplanes: Within 90 days after the effective date of this AD.

(2) For Model G–IV airplanes: Within 180 days after the effective date of this AD.

(i) Corrective Actions

(1) If, during the measurement required by paragraph (h) of this AD, the average paint thickness is greater than the serial number specific allowances provided in table 4 of the applicable customer bulletin specified in paragraph (g) of this AD, and is equal to or greater than 13.0 mils: Before further flight, repair, in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(2) If, during the measurement required by paragraph (h) of this AD, the average paint thickness is greater than the serial number specific allowances provided in table 4 of the applicable customer bulletin specified in paragraph (g) of this AD, but is less than 13 mils: Within 12 months after the effective date of this AD, do all applicable corrective actions, in accordance with the applicable customer bulletin specified in paragraph (g) of this AD, except as required by paragraph (j) of this AD. After accomplishing the applicable corrective actions, the AFMS specified in paragraph (g) of this AD may be removed from the AFM.

(j) Exception

Where the customer bulletins identified in paragraph (g) of this AD specify to contact Gulfstream Aerospace Corporation for corrective actions, this AD requires doing corrective actions before further flight, in accordance with a method approved by the Manager, Atlanta ACO. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(k) Reporting

(1) Submit a report of the measurements required by paragraph (h) of this AD, including the dimensions obtained from tables 1, 2, and 3, of the applicable customer bulletin specified in paragraph (g) of this AD. Submit the report using the Part I Service Reply Card in the applicable customer bulletin identified in paragraph (g) of this AD, to Gulfstream Aerospace Corporation, at the applicable time specified in paragraph (k)(1)(i) or (k)(1)(ii) of this AD. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120 0056.

(i) If the measurement was done on or after the effective date of this AD: Submit the report within 30 days after the measurement.

(ii) If the measurement was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(2) Submit a report of compliance with the corrective actions required by paragraph (i) of this AD, using the Part II Service Reply Card in the applicable customer bulletin identified in paragraph (g) of this AD, to Gulfstream Aerospace Corporation, at the applicable time specified in paragraph (k)(2)(i) or (k)(2)(ii) of this AD.

(i) If the corrective action was done on or after the effective date of this AD: Submit the report within 30 days after accomplishing the corrective action.

(ii) If the corrective action was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(l) Special Flight Permit

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), may be issued to operate the airplane to a location where the requirements of this AD can be accomplished if the applicable AFM specified in paragraph (g) of this AD has been revised as required by paragraph (g) of this AD.

(m) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(o) Related Information

For more information about this AD, contact Michael Cann, Senior Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, GA 30337; phone 404–474–5548; fax 404–474–5605; email: *michael.cann@faa.gov.*

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise.

(i) Gulfstream IV Customer Bulletin 223, dated March 23, 2012, which includes the following attachments:

(A) Part I Service Reply Card, dated March 23, 2012.

(B) Part II Service Reply Card, dated March 23, 2012.

(C) Gulfstream GIV Airplane Flight Manual Supplement GIV–2012–01, dated March 13, 2012.

(ii) Gulfstream V Customer Bulletin 196, dated March 23, 2012, which includes the following attachments:

(A) Part I Service Reply Card, dated March 23, 2012.

(B) Part II Service Reply Card, dated March 23, 2012.

(C) Gulfstream GV Airplane Flight Manual Supplement GV–2012–01, dated March 13, 2012.

(iii) Gulfstream G450 Customer Bulletin 140, dated March 23, 2012, which includes the following attachments:

(A) Part I Service Reply Card, dated March 23, 2012.

(B) Part II Service Reply Card, dated March 23, 2012.

(C) Gulfstream G450/G350 Airplane Flight Manual Supplement G450–2012–01, dated March 13, 2012.

(iv) Gulfstream G550 Customer Bulletin 121, dated March 23, 2012, which includes the following attachments:

(A) Part I Service Reply Card, dated March 23, 2012.

(B) Part II Service Reply Card, dated March 23, 2012.

(C) Gulfstream G550 Airplane Flight Manual Supplement G550–2012–01, dated March 13, 2012.

(D) Gulfstream G550 EASA Airplane Flight Manual Supplement EASA–G550–2012–01, dated March 14, 2012.

(3) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.*

(4) You may review copies of the service information at the FAA, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr_locations.html.*

Issued in Renton, Washington, on June 28, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–16637 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0147; Directorate Identifier 2011–NM–067–AD; Amendment 39–17116; AD 2012–14–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain The Boeing Company Model 767–200 and –300 series airplanes. That AD currently requires replacement of the existing deactivation pin, aft cascade pin bushing, and pin insert on each thrust reverser half with new, improved components. This new AD requires a dye penetrant inspection for cracking of the rivet holes of the bushing plate and repair or replacement, if necessary; and for certain airplanes, replacing the existing bushing with a new bushing and deactivation pin, and installing a new or serviceable stowage bracket for the deactivation pins on all airplanes powered by Pratt & Whitney JT9D series engines. This AD was prompted by reports that certain airplanes require installation of a new bushing and deactivation pin with increased load carrying capability and all airplanes powered by Pratt & Whitney JT9D series engines require installation of a new bracket for stowing the deactivation pin. We are issuing this AD to prevent failure of the thrust reverser deactivation pins, which could fail to prevent a deployment of a deactivated thrust reverser in flight and consequent reduced controllability of the airplane.

DATES: This AD is effective August 21, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 21, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 5, 2002 (67 FR 61478, October 1, 2002).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a Notice of Proposed Rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002). That AD applies to the specified products. The NPRM published in the **Federal Register** on February 22, 2012 (77 FR 10406). That NPRM proposed to continue to require replacement of the existing deactivation pin, aft cascade pin bushing, and pin insert on each thrust reverser half with new, improved components. That NPRM also proposed to require a dye penetrant inspection for cracking of the rivet holes of the bushing plate and repair or replacement, if necessary; and for certain airplanes, replacing the existing bushing with a new bushing and deactivation pin, and installing a new or serviceable stowage bracket for the deactivation pins on all airplanes powered by Pratt & Whitney JT9D series engines.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 10406, February 22, 2012) and the FAA's response to each comment.

Support for Proposed Rule (77 FR 10406, February 22, 2012)

Boeing concurs with the content of the proposed rule (77 FR 10406, February 22, 2012).

Request To Provide Credit for Previous Actions

Atlas Air requested that we revise the NPRM (77 FR 10406, February 22, 2012) to provide credit for actions required by paragraph (h)(2) of the NPRM, if those actions were accomplished before the effective date of the AD using Boeing Service Bulletin 767–78A0089, Revision 3, dated December 18, 2003.

We agree. Paragraph (i) of the NPRM (77 FR 10406, February 22, 2012) provided credit for actions required by paragraph (g) of the NPRM if those actions were performed before the effective date of the NPRM using Boeing Service Bulletin 767–78A0089, Revision 2, dated March 13, 2003; Boeing Service Bulletin 767–78A0089, Revision 3, dated December 18, 2003; or Boeing Service Bulletin 767–78A0089, Revision 4, dated March 6, 2008. We have revised paragraph (i) of this final rule to also provide credit for actions required by paragraph (h)(2) of this AD, if those actions were performed before the effective date of this AD.

Explanation of Changes Made to This AD

We have revised certain headings throughout this AD and revised Note 1 of the NPRM (77 FR 10406, February 22, 2012) to paragraph (g)(2) of this AD. We have also revised paragraph (i) of this AD. These changes have not affected the intent of those paragraphs.

Explanation of Updated Credit Language

We have revised the heading and wording for paragraph (i) of this AD to provide appropriate credit for previous accomplishment of certain actions. This change does not affect the intent of that paragraph.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM (77 FR 10406, February 22, 2012) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 10406, February 22, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 23 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of U.S. registered airplanes	Cost on U.S. operators
Replace deactivation pin, pin bushing, and pin insert (retained actions from existing AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002).	12 work-hours × $85 per hour = $1,020 per inspection cycle.	$12,108	$13,128	23	$301,944
Group 1: Install stowage bracket for deactivation pin (new action).	17 work-hours × $85 per hour = $1,445.	14,644	16,089	16	257,424
Group 2: Replace bushing and deactivation pin and install stowage bracket for thrust reverser deactivation pin (new action).	17 work-hours × $85 per hour = $1,445.	19,972	21,417	7	149,919

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions (repair or replacement of bushing plate) specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002), and adding the following new AD:

2012–14–02 The Boeing Company: Amendment 39–17116; Docket No. FAA–2012–0147; Directorate Identifier 2011–NM–067–AD.

(a) Effective Date

This airworthiness directive (AD) is effective August 21, 2012.

(b) Affected ADs

This AD supersedes AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002).

(c) Applicability

This AD applies to The Boeing Company Model 767–200 and –300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 7830, Thrust Reverser.

(e) Unsafe Condition

This AD was prompted by reports that certain airplanes require installation of a new bushing and deactivation pin with increased load carrying capability and all airplanes powered by Pratt & Whitney JT9D series engines require installation of a new bracket for stowing the deactivation pin. We are issuing this AD to prevent failure of the thrust reverser deactivation pins, which could fail to prevent a deployment of a deactivated thrust reverser in flight and consequent reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Replacement of Deactivation Pin, Pin Bushing, and Pin Insert

(1) This paragraph restates the requirements of paragraph (a) of AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002), with revised service

information. Within 24 months after November 5, 2002 (the effective date of AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002)), replace the existing deactivation pin, pin bushing in the aft cascade mounting ring, and pin insert on each thrust reverser half, with new, improved components, in accordance with Boeing Alert Service Bulletin 767–78A0089, Revision 1, dated May 30, 2002; or Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009. After the effective date of this AD, only Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009, may be used.

(2) The new, improved insert flange and pin bushing does not physically preclude use of a deactivation pin having P/N 315T1604–2 or –5. However, use of deactivation pins having P/N 315T1604–2 or –5 may not prevent the thrust reversers from deploying in the event of a full powered deployment. Therefore, thrust reversers modified per AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002), are required to be installed with the new, longer deactivation pins having P/N 315T1604–6, as specified in Boeing Alert Service Bulletin 767–78A0089, Revision 1, dated May 30, 2002; or Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009. After the effective date of this AD, only Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009, may be used to install the new, longer deactivation pins.

(h) New Inspection, Bushing and Pin Replacement, and Installation of Stowage Bracket

Within 24 months after the effective date of this AD, do the applicable actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) For Group 2 airplanes, as identified in Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009, do a dye penetrant inspection for cracking of the rivet holes and replace any P/N 315T3222–3 or P/N 315T3222–10 bushing and deactivation pin with a new or serviceable P/N 315T3221–1 bushing and new P/N 315T1604–6 deactivation pin, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009. If any crack is found in the rivet holes of the bushing plate, before further flight, repair or replace the bushing plate with a new or serviceable bushing plate, as applicable, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(2) For both Group 1 and Group 2 airplanes, as identified in Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009, install a new or serviceable stowage bracket assembly (P/N 015T0196–4 for the right thrust reverser, P/N 015T0196–5 for the left thrust reverser), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g) and (h)(2) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 767–78A0089, Revision 2, dated March 13, 2003; Boeing Service Bulletin 767–78A0089, Revision 3, dated December 18, 2003; or Boeing Service Bulletin 767–78A0089, Revision 4, dated March 6, 2008.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) AMOCs approved previously in accordance with AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002), are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(k) Related Information

For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009.

(3) The following service information was approved for IBR on November 5, 2002 (67 FR 61478, October 1, 2002).

(i) Boeing Alert Service Bulletin 767–78A0089, Revision 1, dated May 30, 2002.

(4) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(5) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr_locations.html.*

Issued in Renton, Washington, on June 29, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–16933 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0703; Directorate Identifier 2010–SW–019–AD; Amendment 39–17112; AD 2012–13–10]

RIN 2120–AA64

Airworthiness Directives; PZL Swidnik S.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the PZL Swidnik S.A. (PZL) Model PZL W–3A helicopter with a certain generator air outlet collector (collector) installed. This AD requires modifying the generator air outlet collector attachments (collector attachments). This AD is prompted by an incident where cyclic control stick movement was restricted due to rotation of a loose collector, resulting in locking of the longitudinal control system hydraulic actuator fork end. These actions are intended to prevent rotation of the collector, which could lead to restricted cyclic control stick movement, and subsequent loss of control of the helicopter.

DATES: This AD becomes effective August 1, 2012.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of August 1, 2012.

We must receive comments on this AD by September 17, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket

Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this AD, contact Transportation Equipment Factory PZL-Świdnik S.A., A1. Lotników Polskich 1, 21–045 Świdnik, Poland; telephone (+48 81) 468 09 01, 751 20 71; fax (+48 81) 468 09 19, 751 21 73; or at *www.pzl.swidnik.pl.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5110, email *gary.b.roach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2010–0017, dated January 29, 2010, to correct an unsafe condition for the PZL Model PZL W–3A helicopter with a generator air outlet collector, part number (P/N) GT40PCz8B, installed. EASA advises there was a report of an in-flight incident where cyclic control stick movement was restricted. Post-flight investigation revealed that this incident was caused by the rotation of a loose collector, resulting in the locking of the longitudinal control system hydraulic actuator fork end. This condition, if not detected, could lead to restricted cyclic control stick movement, and subsequent loss of control of the helicopter.

FAA's Determination

These helicopters have been approved by the aviation authority of Poland and are approved for operation in the United States. Pursuant to our bilateral agreement with Poland, EASA, their technical representative, has notified us of the unsafe condition described in their AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of this same type design.

There are no helicopters of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these helicopters are placed on the U.S. Registry in the future.

Related Service Information

PZL has issued Service Bulletin No. BS–37–09–230, dated October 13, 2009 (SB), which specifies modifying the collector attachments to prevent collector rotation. The SB specifies installing a cable and reinforcing the welded clamping rings' connections with additional rivets. EASA classified this SB as mandatory and issued AD No. 2010–0017 to ensure the continued airworthiness of these helicopters.

AD Requirements

This AD requires modifying the collector attachments with a protective cable and additional riveting as described in Section II of the manufacturer's service bulletin.

Differences between this AD and the EASA AD

The EASA AD requires compliance within one month after the effective date of their AD, while this AD requires compliance within 100 hours time-in-service.

Costs of Compliance

There are no costs of compliance with this AD because there are no helicopters with this type certificate on the U.S. Registry.

FAA's Justification and Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are unnecessary because there are none of these products on the U.S. Registry and that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2012–13–10 PZL Swidnik S.A.: Amendment 39–17112; Docket No. FAA–2012–0703; Directorate Identifier 2010–SW–019–AD.

(a) Applicability

This AD applies to PZL Swidnik S.A. (PZL) Model PZL W–3A helicopters with a generator air outlet collector, part number (P/N) GT40PCz8B; certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as rotation of the generator air outlet collector, which could lead to restricted cyclic control stick movement and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective August 1, 2012.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Action

Within 100 hours time-in-service, modify the generator air outlet collector attachments in accordance with Section II and Sketches 1 and 2 of PZL–Swidnik Service Bulletin No. BS–37–09–230, dated October 13, 2009.

(f) Special Flight Permits

Special flight permits will not be issued.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5110, email *gary.b.roach@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD 2010–0017, dated January 29, 2010.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 2420: AC Generation System.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Transportation Equipment Factory PZL-Świdnik Service Bulletin No. BS–37–09–230, dated October 13, 2009, to do the actions required by this AD.

(ii) Reserved.

(3) For PZL service information identified in this AD, contact Transportation Equipment Factory PZL-Świdnik S.A., A1. Lotników Polskich 1, 21–045 Świdnik, Poland; telephone (+48 81) 468 09 01, 751 20 71; fax (+48 81) 468 09 19, 751 21 73; or at *www.pzl.swidnik.pl.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(5) You may also view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Fort Worth, Texas, on July 2, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–16939 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. FDA–2012–F–0031]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is amending the food additive regulations to no longer provide for the use of polycarbonate (PC) resins in infant feeding bottles (baby bottles) and spill-proof cups, including their closures and lids, designed to help train babies and toddlers to drink from cups (sippy cups) because these uses have been abandoned. The action is in response to a petition filed by the American Chemistry Council.

DATES: This rule is effective July 17, 2012. Submit either electronic or written objections and requests for a hearing by August 16, 2012. See section VIII of this document for information on the filing of objections.

ADDRESSES: You may submit either electronic or written objections and requests for a hearing, identified by Docket No. FDA–2012–F–0031, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written objections in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2012–F–0031 for this rulemaking. All objections received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section VIII. Objections in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or objections received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vanee Komolprasert, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1217.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of February 17, 2012 (77 FR 9608), FDA announced that a food additive petition (FAP 1B4783) had been filed by the American Chemistry Council (ACC), 700 Second St. NE., Washington, DC 20002. The petition proposed to amend the food additive regulations in § 177.1580 (21 CFR 177.1580) to no longer provide for the use of PC resins in baby bottles and sippy cups because these uses have been abandoned. PC resins are formed by the condensation of 4,4′-isopropylenediphenol (i.e., Bisphenol A (BPA)), and carbonyl chloride or diphenyl carbonate. PC resins may be safely used as articles or components of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, in accordance with the prescribed conditions of § 177.1580.

II. Evaluation of Abandonment

Under section 409(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(i)), FDA ''shall by regulation prescribe the procedure by which regulations under the foregoing provisions of this section may be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of such regulations.'' FDA's regulations specific to administrative actions for food additives provide as follows: ''The Commissioner, on his own initiative or on the petition of any interested person, pursuant to part 10 of this chapter, may propose the issuance of a regulation amending or repealing a regulation pertaining to a food additive or granting or repealing an exception for such additive.'' (§ 171.130(a) (21 CFR 171.130(a))). These regulations further provide: ''Any such petition shall include an assertion of facts, supported by data, showing that new information exists with respect to the food additive or that new uses have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the existing regulation or exemption may justify its amendment or appeal. New data shall be furnished in the form specified in §§ 171.1 and 171.100 for submitting petitions.'' (§ 171.130(b)). Under these regulations, a petitioner may propose that FDA amend a food additive regulation if the petitioner can demonstrate that there are ''old uses abandoned'' for the relevant food additive. Such abandonment must be complete for any intended uses in the U.S. market. While section 409 of the FD&C Act and § 171.130 also provide for amending or revoking a food additive regulation based on safety, an amendment or revocation based on abandonment is not based on safety, but is based on the fact that regulatory authorization is no longer necessary for the use of the food additive because that use has been permanently and completely abandoned.

Abandonment may be based on the abandonment of certain authorized food additive uses for a substance (e.g., if a substance is no longer used in certain product categories) or on the abandonment of all authorized food additive uses of a substance (e.g., if a substance is no longer being manufactured). If a petition seeks an amendment to a food additive regulation based on the abandonment of certain uses of the food additive, such uses must be adequately defined so that both the scope of the abandonment and any amendment to the food additive regulation are clear.

The ACC petition contained public information and information collected from companies that produce PC resins to support the claim that baby bottles and sippy cups manufactured from PC resins are no longer being introduced into the U.S. market and that manufacturers of baby bottles and sippy cups have abandoned the use of PC resins in making these products. Specifically, the petition contained the results of an industry poll showing that the PC resin manufacturers, which represent over 97 percent of worldwide PC resin production capacity, are no longer, to their knowledge, selling PC resins to be used in the manufacture of baby bottles and sippy cups intended for import into the United States or sale in the U.S. market.

III. Comments on the Filing Notice

The Agency provided 60 days for comments on the filing notice. FDA received six distinct comments from individuals and consumer groups (FDA received seven comments total, but one represented a corrected version of a comment submitted earlier). Three of the six comments exclusively addressed the safety of BPA in food, two of the comments addressed both safety and abandonment, while one comment addressed only abandonment. While none of these comments included any information to indicate that the use of BPA-based PC resins in the manufacture of baby bottles and sippy cups has not been completely and permanently abandoned, or to indicate that these uses were not adequately defined, these comments raised six main issues, discussed further in this document.

A. The Safety of BPA

As indicated in the filing notice (77 FR 9608 at 9609), because the petition was based on an assertion of abandonment, the Agency did not request comments on the safety of the use of PC resins in baby bottles and sippy cups. Such safety information is not relevant to abandonment and, therefore, any comments addressing the safety of PC resins were not considered in the Agency's evaluation of this petition. Separate from FDA's consideration of this petition, FDA is actively assessing the safety of BPA (see 75 FR 17145, April 5, 2010; see also *http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm064437.htm*).

B. Whether the Subject Uses Are Adequately Defined

1. Baby Bottles

(Comment 1) One comment stated that the Agency did not offer additional description or clarification of the term ''baby bottles,'' which was defined by ACC as ''infant feeding bottles.'' The comment stated that this definition failed to identify the full spectrum of beverage containers from which infants, toddlers, and children consume beverages.

(Response) The Agency has concluded that the term infant feeding bottle (baby bottle) adequately defines the specific use of PC resins that is the subject of the proposed action so that both the scope of the abandonment and this amendment to the food additive regulation are clear. FDA agrees that this term does not cover the full spectrum of beverage containers from which infants, toddlers, and children consume beverages. However, this spectrum of beverage containers was not the scope of the petition. Instead, the petition was limited to the use of PC resins in baby bottles and sippy cups. FDA concludes that the terms ''baby bottle'' and ''infant feeding bottle'' are generally recognized by both the general public and the regulated industry and adequately define this use of PC resins addressed by the petition.

2. Sippy Cups

(Comment 2) The petition defined ''sippy cup'' as a spill-proof cup designed to help train babies to drink from cups. As stated in the filing notice (77 FR 9608 at 9609), for the purposes of this petition, FDA more specifically considers ''sippy cup'' to mean a spill-proof cup, including its closures and lids, designed to train babies or toddlers to drink from cups. FDA specifically requested comment on whether this use of PC resins is adequately defined. Two of the comments expressed the opinion that the term ''sippy cup'' is narrow or not inclusive of the different types of bottles and cups used by small children and toddlers, and defining sippy cups as cups that are spill-resistant would not cover the use of PC resins in toddler cups (such as drinking cups without a lid) that do not have this feature. One comment recommended that the term ''designed for'' be clarified to include both functionality (e.g., spill-resistant) and aesthetics (e.g., anything with cartoon characters) in order to cover a broader category of products. Another comment recommended that the definition of ''sippy cup'' be expanded to include all cups rated for the target age group. No comments stated that this particular use of PC resins was not adequately defined.

(Response) The Agency has determined that the functionality of a spill-resistant cup is the critical factor in defining the particular use of PC resins that the petition asserted has been permanently and completely abandoned. The petition asserted that the use of PC resins in spill-proof cups has been abandoned. Because the scope of the petition was limited to functionality, and did not address aesthetics, FDA concludes that the functionality of spill resistance is the defining feature of a ''sippy cup'' as contemplated by the petition, and about which FDA requested comment.

The Agency has concluded that the phrase ''spill proof cups, including their closures and lids, designed to help train babies or toddlers to drink from cups (sippy cups)'' adequately defines the specific use of PC resins that is the subject of the proposed action and is generally recognized by the regulated industry and the public. The comments that addressed the term ''sippy cup'' did not assert that this term is unclear to consumers or industry, or that this use of PC resins is not adequately defined; instead, the comments opined that any action taken by FDA should address beverage containers used by children that are beyond the scope of these terms. FDA agrees that these terms do not cover the full spectrum of beverage containers from which infants, toddlers, and children consume beverages. However, this spectrum of beverage containers was not the scope of the petition. Instead, the petition was limited to specific uses of PC resins.

C. The Scope of the Uses of PC Resins Addressed by the Petition

(Comment 3) Two comments recommended that the scope of any action taken by FDA in response to ACC's petition include other products that an infant or toddler may regularly put in its mouth (e.g., pacifiers, teethers, tableware) or that may come in contact with breast milk (e.g., breast pump, pumping supplies, breast milk storage kits).

(Response) The Agency has concluded that it is not appropriate, in this amendment to the food additive regulations, to address any uses of PC resins beyond those specified in ACC's petition, for the following reasons:

- The suggested products are beyond the scope of the uses as described in the petition, about which the petition provided detailed evidence, and about which FDA requested comment; and
- No comments received by FDA provided specific information to demonstrate that any additional uses of PC resins have been completely and permanently abandoned.

D. Whether the Subject Uses Have Been Abandoned

(Comment 4) One comment expressed the opinion that PC resins are still used worldwide in the manufacture of plastics products and, although the current manufacturers of sippy cups do not currently use these resins, a new producer may still choose to use these PC resins to make plastic products. Accordingly, the comment asserts that removing these uses of PC resins from the food additive regulations leaves the opportunity for these uses of BPA to go ''unchecked.''

(Response) The Agency does not agree with this comment. First, the petition provided evidence that the use of PC resins in the manufacture of baby bottles and sippy cups has been permanently and completely abandoned, and FDA did not receive any comments demonstrating that these uses have not been abandoned. The comment addressed uses of PC resins that are beyond the scope of the petition and this action. A food is considered to be adulterated if it contains an unapproved food additive (see section 409 of the FD&C Act). The amendment to § 177.1580 means that FDA's regulations no longer provide for the use of PC resins in baby bottles and sippy cups.

E. Labeling of BPA Containing Materials

(Comment 5) One comment asserted that because FDA does not require that manufacturers identify the presence of BPA-containing materials in their labeling, the general public is defenseless to counter industry assertions about the abandonment (i.e., the general public has no way of knowing whether industry has in fact abandoned certain uses of BPA-containing materials or whether certain products contain BPA), and recommended that FDA require labeling of all food contact materials that contain BPA.

(Response) The petition did not request that FDA establish requirements for the labeling of products manufactured with BPA. Therefore, this comment is outside the scope of the action requested by the petition, and FDA did not consider this comment.

F. The Amount of BPA Allowed in the Plastic Products

(Comment 6) One comment expressed the opinion that one way to determine if PC resins are not present in a plastic product is to measure the presence of BPA in the product. The comment suggested that, in addition to granting ACC's petition, FDA should set a limit of the amount of BPA found in the other suggested plastic products to 0.1 parts per billion.

(Response) The petition did not request that FDA establish limits for the amount of BPA in certain products. Therefore, this comment is outside the scope of the action requested by the petition, and FDA did not consider this comment.

IV. Conclusion

FDA reviewed the data and information in the petition and other available relevant material to evaluate whether the use of BPA-based PC resins in the manufacture of baby bottles and sippy cups has been completely and permanently abandoned. Based on the available information, the Agency concludes that these uses have been completely and permanently abandoned. Therefore, the regulations in 21 CFR part 177 should be amended as set forth in this document.

V. Public Disclosure

In accordance with § 171.1(h), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), the Agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Impact

The Agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 1B4783 (77 FR 9608). No new information or comments have been received that would affect the Agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Objections

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections by (see **DATES**). Each objection must be separately numbered, and each numbered objection must specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested must specifically so state. Failure to request a hearing for any particular objection constitutes a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested must include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection constitutes a waiver of the right to a hearing on the objection. It is only necessary to send one set of documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

■ 1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

■ 2. Section 177.1580 is amended by adding paragraph (d) to read as follows:

§ 177.1580 Polycarbonate resins.

* * * * *

(d) Polycarbonate resins may be used in accordance with this section except in infant feeding bottles (baby bottles) and spill-proof cups, including their closures and lids, designed to help train babies and toddlers to drink from cups (sippy cups).

Dated: July 12, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17366 Filed 7–16–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2011–0551]

RIN 1625–AA00; 1625–AA08

Special Local Regulation and Safety Zone; America's Cup Sailing Events, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation and a safety zone for sailing regattas that may be conducted on the waters of San Francisco Bay adjacent to the City of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island. This rule will regulate the on-water activities associated with the ''2012 America's Cup World Series'' regatta scheduled for August 21–26, 2012; and the ''Louis Vuitton Cup,'' ''Red Bull Youth America's Cup,'' and ''America's Cup Finals Match'' scheduled to occur in July, August, and September, 2013. These regulations are necessary to provide for the safety of life on the navigable waters immediately prior to, during, and immediately after any regattas that may occur. The regulation will temporarily restrict vessel traffic in a portion of the San Francisco Bay, prohibit vessels not participating in the America's Cup sailing events from entering the designated race area, and create a temporary safety zone around racing vessels.

DATES: Section 100.T11–0551A is effective from August 21, 2012, until August 26, 2012. Section 100.T11–0551B is effective from July 4, 2013, until September 23, 2013. Section 165.T11–0551 is effective from August 21, 2012, until September 23, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2011–0551. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant DeCarol Davis, U.S. Coast Guard Sector San Francisco, Waterways Management Division, U.S. Coast Guard; telephone (415) 399–7443, email *DeCarol.A.Davis@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

ACRM America's Cup Race Management
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR **Federal Register**
MEP Marine Event Permit
NEPA National Environmental Policy Act
NPRM Notice of Proposed Rulemaking
NPS National Park Service
VTS Vessel Traffic Service

A. Regulatory History and Information

On January 30, 2012, the Coast Guard published a notice of proposed rulemaking (NPRM) proposing regulations to protect public safety if the 34th America's Cup sailing races occur, as proposed, in 2012 and 2013 on San Francisco Bay. See 77 FR 4501. The Coast Guard provided a 90-day period for public comment on the proposed regulations, and also accepted public comments that arrived shortly after the close of that comment period. The Coast Guard also held three public meetings to gather information pertaining to activities on the Bay that might be affected by the America's Cup events or related safety regulations. A record of these meetings is available in the docket, which you may access following the procedure outlined in the **ADDRESSES** section above. We received a total of 77 comments during the public comment period.

The Coast Guard considered the public input received through the docket and at these meetings when developing this rule. Typical comments included the following: the need for clarification on the dates and times of the races; concern about the effects of the rule on recreational users' access to the Bay during the events; and general concerns about the events' impact on commerce. These concerns are discussed below.

B. Basis and Purpose

Under 33 CFR 100.35, the Coast Guard District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved regatta or marine parade. The Commander of Coast Guard District 11 has delegated to the Captain of the Port (COTP) San Francisco the responsibility of issuing such regulations. The COTP also has the authority to establish safety zones under 33 CFR 1.05–1(f) and 165.5.

The America's Cup Race Management (ACRM) has applied for a Marine Event Permit (MEP) to hold the 34th America's Cup sailing events on the waters of San Francisco Bay in California, and that application is still pending. The Coast Guard's approval of the ACRM permit application is contingent upon completion of the Environmental Assessment (EA) of the MEP (referred to in this document as the ''Permitting EA'') under the National Environmental Policy Act (NEPA). On June 8, 2012, the Permitting EA was made available for public comment at *www.americascupnepa.org.* The Permitting EA associated with the MEP addresses the impact of this rule, as well as other issues. The Permitting EA was conducted jointly with the National Park Service and other federal agencies and addresses both land and water environmental impacts, including the on-water impacts of this special local regulation and safety zone. To accommodate the additional time required to complete the Permitting EA, while still providing public notice of and benefiting from public comment on the safety provisions of this rule, we conducted this rulemaking before approval of the MEP. As part of the rulemaking, we provided an environmental analysis of the specific on-water environmental impacts of the rule (''Rulemaking EA''). The Permitting EA is broader than, and encompasses the topics of, the Rulemaking EA.

We anticipate that this special local regulation and safety zone will be necessary to ensure public safety during the sailing events should the MEP be approved. If the MEP is not approved, however, we will withdraw this rule.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard conducted widespread public outreach to better understand the potential impacts of this rule on commercial operations and recreational activities on the Bay. To provide the public with an opportunity to comment on this rulemaking process, the Coast Guard held three public meetings and established a 90-day comment period. As noted above, we received a total of 77 comments. Of those comments received, 87 percent came from recreational users, 7 percent came from environmental organizations, and 6 percent came from commercial vessel operators.

Comments on Access to the Bay

The majority of comments received from recreational users came from the boardsailing community, which includes windsurfers and kitesurfers. Many boardsailors raised concerns about limited waterfront access adjacent to Crissy Field and the on-water areas near the Golden Gate Bridge amenable to boardsailing. Boardsailors indicated that the proposed rule would prevent their launching from Crissy Field, and environmental organizations raised similar concerns about recreational access.

In response to comments about waterfront access, this rule modifies the regulated area for 2012 to allow for more recreational access in vicinity of Crissy Field. The regulated area for 2012 will be smaller in size and located further east than the regulated area originally proposed in the NPRM. The size and location of this regulated area will encourage spectator-viewing ashore, provide greater recreational access to the western portion of the Bay near the Golden Gate Bridge, and minimize crowding in vicinity of Crissy Field. For these reasons, there is no longer a need for the Coast Guard to establish an ''Area Closed to All Motorized Vessels and Vessels Greater Than 20 Feet'' in 2012. We have therefore removed the proposed area from the 2012 special local regulation. We did not make similar modifications to the 2013 regulated area, however, because the size and location of that area is appropriate for the larger, faster vessels to be used in the 2013 events. Because the size and location of the regulated area for 2013 have not changed, the rule will maintain the ''Area Closed to All Motorized Vessels and Vessels Greater Than 20 Feet'' during the 2013 events.

To address concerns relating to access along the San Francisco waterfront in 2013, a transit zone will provide access to all the port facilities along the waterfront as proposed in the NPRM. This transit zone will enable both commercial and recreational users continued access to waterfront berths and facilities during the races. Depending on racing activity or spectator traffic, the Coast Guard may direct the use of ''follow-me'' boats to guide commercial and recreational users through the transit zone. To prevent crowding and congestion in this area, vessels are prohibited from loitering or anchoring in the transit zone.

Comments on the Enforcement Period

In addition to their concerns pertaining to limited access, many boardsailors expressed concern about the length of the proposed enforcement period of the special local regulation, which would have applied between noon and 5 p.m. on days designated for program events. Several comments from boardsailors indicated that much of the Bay Area's recreational boardsailing occurs after the work day during the week, which coincides with the proposed enforcement period. To address these concerns, the Coast Guard will modify the effective dates for 2012 and the effective dates and enforcement period for 2013. In this final rule, we will use the term ''program dates'' instead of ''race dates'' because some of the scheduled enforcement dates encompass activities other than racing, such as the opening day ceremonies.

Although the 2012 enforcement period will continue to be from noon to 5 p.m., the events will be shorter than proposed in the NPRM and include only 6 days of program activity instead of 12 program days during a 22 day period. The ACRM has recently proposed to conduct an additional America's Cup World Series event during the 2012 San Francisco Bay Fleet Week activities from October 4–7, 2012. If approved, that event may be covered by an existing regulation for Fleet Week, but would not be covered by this regulation.

In response to comments requesting that the enforcement period end earlier in the day in 2013, we have shifted the enforcement period one hour earlier to accommodate the recreational community. Enforcement will occur from 11 a.m. to 4 p.m. on designated program days between July 4 and September 23, 2013, and not from noon to 5 p.m. as originally proposed. Not every day during this enforcement period will be a program day, and enforcement will not occur on days when no programmed activity is scheduled.

Additionally, as noted in the NPRM, event activity will end earlier on some program days when fewer races are scheduled. The enforcement period will not exceed the dates or times specified in the rule.

The Coast Guard received several comments and suggestions about communicating to the public the dates and times when the rule is being enforced. For the 2012 races, a program calendar is available in the docket, and the Coast Guard will use a Broadcast Notice to Mariners over VHF Channel 16 to announce when enforcement begins and ends on each program day. For the 2013 races, a finalized program calendar will be posted in the docket no later than June 1, 2013. For the time being, a tentative program calendar is available in the docket. Notice of the finalized 2013 program calendar will be published in the **Federal Register** and the Local Notice to Mariners. The Coast Guard will also use a Broadcast Notice to Mariners to announce when enforcement begins and ends on each program day in 2013. Based on the public's comments, the Coast Guard intends to explore social media tools or other means to help inform and update the public on event activity. The Coast Guard will work with ACRM, local government agencies, port partners, and other maritime communities to ensure widest dissemination of information.

Comments on the Environmental Analysis

In addition to comments on recreational access, we received comments pertaining to the NEPA Rulemaking EA.

One comment suggested the public comment period for the Rulemaking EA was too short. The comment period on the Rulemaking EA was designed to coincide with the comment period for the rule, without delaying this final rule, and we believe it was adequate because of the limited subject of this rule and the number and quality of comments we did receive during the comment period. We also accepted and considered comments arriving after the close of the comment period on April 30, 2012.

Another comment questioned the adequacy of the Rulemaking EA in addressing impacts to eelgrass, birds, and other wildlife. These issues are discussed throughout the Rulemaking EA, including noting the location of known eelgrass beds in Figure BIO–3. Impact thresholds for these species are found on pages 4–8 and 4–9 of the Rulemaking EA. The analysis of impacts to these biological resources is found in the EA on pages 4–13 through 4–17.

Another comment asked that the Coast Guard describe the marine protective closures for sensitive resources and prescribe enforcement methods to ensure wildlife protective areas. We recognize the need to describe such existing protected areas for public awareness and have included a figure in the docket that demarcates the only Wildlife Protection Area (WPA) within the regulated area, at Crissy Field. This WPA, which extends 300 feet from shore, is established and regulated by the National Park Service (NPS) to prevent boats and other maritime activity from disturbing nesting snowy plovers on Crissy Field. During the America's Cup enforcement periods, we understand the NPS also intends to establish a 500 feet environmental buffer around Alcatraz Island, closed to all maritime activity, to protect nesting seabirds along the western cliffs of the island.

While the Coast Guard will use its authorities to enforce existing marine environmental protection regulations and provide assistance to other agencies when requested, the proposed creation of enforcement authorities, operational strategies for the Crissy Field WPA, or an environmental buffer proposed by another agency is outside of the scope of this rule, which is being promulgated to ensure the safety of life on the navigable waters in accordance with 33 CFR 100.35 and 165.5. Any new environmental protection regulations would be related to a determination of environmental harm, which was not found in relation to the implementation of this special local regulation and safety zone.

Another comment indicated that there were errors in the Rulemaking EA relating to the 2012 dates and concerns that the project description is unsettled. The Coast Guard acknowledges that the event dates were not finalized by the date of the EA and states on pages 1–1 and 1–2 of the Rulemaking EA that ''The Marine Event Permit cannot be issued at this time as the details of AC34, including the exact nature of the sailing event, control measures, race dates, etc., are still being finalized.'' As noted elsewhere in this discussion, the Permitting EA associated with the MEP will address the impact of this rule, as well as other issues.

Similarly, another comment stated that the Rulemaking EA was procedurally inadequate and that the EA and the special local regulation are ''segmented.'' The Coast Guard disagrees with this comment. As described in the *Basis and Purpose* section above and on pages 1–1 and 1–2 of the Rulemaking EA, the Coast Guard has made no decision on the MEP. The Coast Guard's approval of the MEP application is contingent upon completion of the Permitting EA, which is being conducted jointly with the NPS and will require more time for completion as it covers both land and water environmental impacts. As stated on page 2–1 of the Rulemaking EA, this rule ''is unique among the other federal permits and approvals and requires a formal rulemaking process, in accordance with 33 CFR 100 and 165''; therefore, the Coast Guard determined that in order to accommodate the additional time required to complete the Permitting EA, while still providing public notice of and benefiting from public comment on the safety provisions of this rule, we conducted this rulemaking prior to the completion of the jointly executed Permitting EA and the approval of the MEP.

Under these circumstances, the Coast Guard is establishing this special local regulation and safety zone prior to a decision on the MEP or the completion of the Permitting EA. The Permitting EA is broader than, and will encompass the topics of, the Rulemaking EA. If the MEP is not approved, we will withdraw this rule.

A comment suggested that a full Environmental Impact Statement (EIS) should be prepared for this project. The Rulemaking EA analyzed all issues related to the proposed action and found that there would not be adverse impacts from implementing the SLR; therefore, an EIS is not required.

Another comment pertaining to the Rulemaking EA stated that Section 1.5 (Summary of Laws) should be amended to include the Migratory Bird Treaty Act (MBTA). The Coast Guard acknowledges its responsibility as a Federal agency under the MBTA to protect migratory birds. The Rulemaking EA on pages 4–17 and 4–18 contains analysis on the effects of this rule on colonial birds at Alcatraz. It states that ''Because the proposed action does not add new vessels to the area, and because the proposed action zone encompasses the southwestern portions of Alcatraz during the 2013 events, the effects of the proposed action are negligible.'' This issue, including a description of the MBTA and impacts related to colonial birds, is analyzed in the Permitting EA. This is appropriate because the action alternatives considered in the Permitting EA could have the potential to affect colonial birds.

Comments on Commercial Vessel Operations

In addition to those comments received from recreational users and environmental organizations concerned about the Rulemaking EA, the Coast Guard also received comments from representatives of the local maritime industry.

One operator shared concerns pertaining to the shipping industry's ability to meet work shift schedules. The Coast Guard acknowledges these concerns and the need for a safe and accessible waterway. The Coast Guard will make every effort to maximize the efficient use of the Bay and minimize delays for commercial vessels. As proposed in the NPRM, shipping traffic may continue to operate using the existing Deep Water (two-way) Traffic Lane during the America's Cup sailing races. The Regulated Navigation Area (RNA) specified in 33 CFR 165.1181 would continue to apply in this area. This RNA contains one-way provisions for certain vessels such as those greater than 1,600 gross tons carrying dangerous cargos. At the COTP's discretion, vessels in addition to those listed in the RNA could be restricted to one-way traffic as coordinated by the VTS. Such a one-way traffic scheme could allow more maneuvering space for transiting vessels and may reduce navigational obstacles.

Another comment expressed concern about the location of the contingent regulated area and its potential to interfere with shipping traffic. In the unlikely event that racing is planned in the contingent regulated area, it will only be conducted with COTP approval. If the COTP deems that racing would interfere with the commercial shipping traffic requiring transit through the contingent regulated area, then the race will be delayed, shortened, or terminated to accommodate commercial shipping schedules.

We also received a comment from a maritime labor representative that expressed concern for landside safety and security during the America's Cup sailing events. Coast Guard response to landside safety and security issues are outside of the scope of this rulemaking, which establishes regulations specific to the on-water activities associated with the marine event.

Ferry vessel operators expressed concern that the proposed positioning of the transit zone for 2013 does not fully allow ferry operators to maintain their schedules. For this reason, we are modifying the coordinates of the eastern portion of the transit zone to improve access to Piers 31 through 45. The eastern entrances of the transit zone may also be temporarily closed as races finish, as was proposed in the NPRM. Vessels are still prohibited from loitering or blocking the transit area. At the COTP's discretion, vessel movement in this zone can also be restricted to one-way traffic coordinated by the Patrol Commander.

We made no changes to the proposed restrictions on Anchorage 7 or the closure of shipping lanes.

The Coast Guard appreciates the comments and concerns brought forward during the NPRM public comment period. These comments have been reviewed, discussed, and incorporated into this rulemaking where changes were needed.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this rule restricts navigation on San Francisco Bay, these restrictions will only be in place in a small area for a limited time on specific dates. The entities most likely to be affected by this rule are commercial shipping vessels, ferry vessels, fishing vessels and pleasure craft engaged in recreational activities. We expect this event to be well publicized so that waterway users are able to plan their activities in advance to take into account any restrictions.

The rule does not exceed a five-hour period between noon and 5 p.m. on certain dates and 11 a.m. and 4 p.m. on other dates. On many race days, the affected period will be shorter. The entities affected will be permitted to navigate around the restricted area during these periods, and the rule creates a traffic scheme for doing so. The rule does not prevent commercial operators from conducting operations during the America's Cup sailing events. Shipping traffic may operate around the regulated area using the Deep Water (two-way) Traffic Lane. The San Francisco VTS will help facilitate the safe and efficient use of the waterways.

2. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We find that the rule has some effect on small entities, but does not have a significant economic impact on a substantial number of the entities. This rule affects the following entities, some of which might be small entities: (i) The owners or operators of commercial vessels intending to transit, operate, or anchor in a portion of the San Francisco Bay; and (ii) the owners and operators of recreational vessels using the regulated portion of San Francisco Bay.

Although this rule affects these small entities, this rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) This rule will restrict only a small portion of the waterway for a limited period of time; (ii) vessel traffic may pass safely around the area; (iii) vessel traffic may pass through the area with COTP approval; (iv) recreational vessel operators may use spaces outside of the affected areas; (v) the maritime public will be advised in advance of this regulated area via Broadcast Notice to Mariners; and (vi) at times of high traffic density anticipated in 2013, there will be a transit zone implemented to facilitate navigation. These measures have been implemented during similar marine events such as Fleet Week and have been successful.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action does not individually or cumulatively have a significant effect on the human environment. A copy of the environmental analysis is available in the docket.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 as follows:

PART 100—REGATTAS AND MARINE PARADES

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add temporary § 100.T11–0551A to read as follows:

§ 100.T11–0551A Special Local Regulation; 2012 America's Cup World Series.

(a) *Location.* This special local regulation establishes regulated areas on the waters of San Francisco Bay located in the vicinity of the Golden Gate Bridge, Alcatraz Island, the City of San Francisco waterfront, and the Bay Bridge. Movement within marinas, pier spaces, and facilities along the City of San Francisco waterfront is not regulated by this rule.

(1) The following area is the Primary Regulated Area for the 2012 America's Cup sailing regattas: All waters of San Francisco Bay bounded by a line beginning at position 37°48′43″ N, 122°25′11″ W at the eastern end of Fisherman′ s Wharf Breakwater, running east to position 37°48′43″ N, 122°25′01″ W, running north to position 37°49′07″ N, 122°25′01″ W, running northwest to position 37°49′14″ N, 122°25′12″ W located south of Alcatraz Island, running west to position 37°49′14″ N, 122°27′13″ W, running south to position 37°48′23″ N,

122°27′13″ W, running eastward along the City of San Francisco shoreline, along the Municipal Pier, east across the mouth of Aquatic Park cove to the Fisherman' s Wharf breakwater then east along the breakwater. All coordinates are North American Datum 1983.

(2) The following area is the Contingent Regulated Area for the 2012 America's Cup sailing regattas: All waters of San Francisco Bay bounded by a line connecting the following coordinates: 37°50′56″ N, 122°24′37″ W; 37°51′24″ N, 122°23′39″ W; 37°51′23″ N, 122°22′58″ W; 37°50′07″ N, 122°22′05″ W; 37°49′54″ N, 122°22′43″ W; 37°49′35″ N, 122°22′46″ W; 37°48′51″ N, 122°22′20″ W; 37°48′52″ N, 122°23′56″ W; 37°49′02″ N, 122°24′43″ W; 37°49′48″ N, 122°24′47″ W; and 37°50′55″ N, 122°24′37″ W. All coordinates are North American Datum 1983.

(b) *Enforcement Period.* The regulations in this section will be enforced between the hours of noon and 5 p.m. on designated program days between August 21, 2012, and August 26, 2012. The enforcement period may be curtailed earlier by the Captain of the Port (COTP) or Patrol Commander. Notice of the specific program dates and times will be issued via Broadcast Notice to Mariners and published by the Coast Guard in the Local Notice to Mariners and in the **Federal Register**.

(c) *Definitions*—(1) *Patrol Commander.* As used in this section, ''Patrol Commander'' or ''PATCOM'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer, or a Federal, State, or local officer designated by the Captain of the Port San Francisco (COTP) to assist in the enforcement of the special local regulation.

(2) *2012 Race Area.* As used in this section, ''2012 Race Area'' means an area within the Primary Regulated Area bounded by America's Cup support vessels, which will be marked by prominently displayed banners.

(3) *Contingent Race Area.* As used in this section, ''Contingent Race Area'' means an area within the Contingent Regulated Area bounded by America's Cup support vessels, which will be marked by prominently displayed banners.

(d) *Special Local Regulations.* (1) *2012 Race Area Restrictions.* The 2012 Race Area is closed to all unauthorized vessel traffic, except for those permitted by the COTP or PATCOM.

(2) *Contingent Race Area Restrictions.* In the event the race area must be altered to accommodate a north-south wind direction or other shifts in weather, the restrictions in paragraph (d)(1) of this section will apply to the Contingent Race Area. In deciding whether to conduct races in the Contingent Race Area, the COTP will consider commercial shipping traffic that intends to operate in the Central Bay Precautionary Area west of Treasure Island. The COTP will issue Broadcast Notices to Mariners to publicize the use of the Contingent Race Area.

(3) *Requesting Transit through Race Areas.* Vessel operators who desire to enter or operate within the 2012 Race Area or the Contingent Race Area while those areas are restricted must contact the COTP or PATCOM to obtain permission to do so. Vessel operators given permission to enter or operate in those race areas must comply with all directions given to them by the COTP or PATCOM. Persons and vessels may request permission to enter a race area on VHF Channel 23A or through the Coast Guard Sector San Francisco Command Center via telephone at 415–399–3547.

(4) *Closure of Shipping Lanes.* Eastbound and Westbound San Francisco Bay Traffic Lanes will be closed to all vessels greater than or equal to 100 gross tons. Vessel traffic will be permitted to operate during the enforcement period using the Deep Water (two-way) Traffic Lane established in 33 CFR 165.1181. Vessels of 100 gross tons or greater that need to enter or operate within the closed traffic lanes shall obtain permission from the COTP by contacting the Vessel Traffic Service via VHF Channel 14.

(5) *Control of Vessel Movement to Ensure Safety.* (i) The COTP, or PATCOM as the designated representative of the COTP, may control the movement of all vessels operating on the navigable waters of San Francisco Bay when the COTP has determined that such orders are justified in the interest of safety by reason of weather, visibility, sea conditions, temporary port congestion, and other temporary hazardous circumstances.

(ii) When hailed or signaled by PATCOM, the hailed vessel must come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in additional operating restrictions, citation for failure to comply, or both.

(iii) The COTP may delay, shorten, or terminate any America's Cup race at any time it is deemed necessary.

(iv) After termination of the America's Cup races each day, the Coast Guard will issue a Broadcast Notice to Mariners to publicize the decision to resume normal operations.

■ 3. Add temporary § 100.T11–0551B to read as follows:

§ 100.T11–0551B Special Local Regulation; 2013 America's Cup Sailing Events.

(a) *Location.* This special local regulation establishes regulated areas on the waters of San Francisco Bay located in the vicinity of the Golden Gate Bridge, Alcatraz Island, the City of San Francisco waterfront, and the Bay Bridge. Movement within marinas, pier spaces, and facilities along the City of San Francisco waterfront is not regulated by this rule.

(1) The following area is the Primary Regulated Area for the 2013 America's Cup sailing events: All waters of San Francisco Bay bounded by a line beginning at position 37°48′12″ N, 122°24′04″ W located on the foot of Pier 23, running northeast to position 37°48′41″ N, 122°23′16″ W, running northwest to position 37°49′41″ N, 122°24′30″ W located east of Alcatraz Island, running west to position 37°49′41″ N, 122°27′35″ W, running southwest to position 37°49′02″ N, 122°28′21″ W, running south to position 37°48′32″ N, 122°28′21″ W, and running eastward along the City of San Francisco shoreline ending at position 37°48′12″ N, 122°24′04″ W located on the foot of Pier 23. All coordinates are North American Datum 1983.

(2) The following area is the Contingent Regulated Area for the 2013 America's Cup sailing events: All waters of San Francisco Bay bounded by a line connecting the following coordinates: 37°50′56″ N, 122°24′37″ W; 37°51′24″ N, 122°23′39″ W; 37°51′23″ N, 122°22′58″ W; 37°50′07″ N, 122°22′05″ W; 37°49′54″ N, 122°22′43″ W; 37°49′35″ N, 122°22′46″ W; 37°48′51″ N, 122°22′20″ W; 37°48′52″ N, 122°23′56″ W; 37°49′02″ N, 122°24′43″ W; 37°49′48″ N, 122°24′47″ W; and 37°50′55″ N, 122°24′37″ W. All coordinates are North American Datum 1983.

(b) *Enforcement Period.* The following regulations will be enforced between the hours of 11 a.m. and 4 p.m. on designated program days between July 4, 2013, and September 23, 2013. The enforcement period may be curtailed earlier by the Captain of the Port (COTP) or Patrol Commander. Notice of the specific program dates and times will be issued via Broadcast Notice to Mariners and published by the Coast Guard in the Local Notice to Mariners and in the **Federal Register**.

(c) *Definitions*—(1) *Patrol Commander.* As used in this section, ''Patrol Commander'' or ''PATCOM'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer, or a Federal, State, or local officer designated by the Captain of the Port San Francisco (COTP) to assist in the enforcement of the special local regulation.

(2) *2013 Race Area.* As used in this section, ''2013 Race Area'' means an area within the Primary Regulated Area bounded by America's Cup support vessels, which will be marked by prominently displayed banners.

(3) *Contingent Race Area.* As used in this section, ''Contingent Race Area'' means an area within the Contingent Regulated Area bounded by America's Cup support vessels, which will be marked by prominently displayed banners.

(d) *Special Local Regulations*—(1) *2013 Race Area Restrictions.* The 2013 Race Area is closed to all unauthorized vessel traffic, except for those permitted by the COTP or PATCOM.

(2) *Contingent Race Area Restrictions.* In the event the race area must be altered to accommodate a north-south wind direction or other shifts in weather, the restrictions in paragraph (d)(1) of this section will apply to the Contingent Race Area. In deciding whether to conduct races in the Contingent Race Area, the COTP will consider commercial shipping traffic that intends to operate in the Central Bay Precautionary Area west of Treasure Island. The COTP will issue Broadcast Notices to Mariners to publicize the use of the Contingent Race Area.

(3) *Requesting Transit through Race Areas.* Vessel operators who desire to enter or operate within the 2013 Race Area or the Contingent Race Area while those areas are restricted must contact the COTP or PATCOM to obtain permission to do so. Vessel operators given permission to enter or operate in those race areas must comply with all directions given to them by the COTP or PATCOM. Persons and vessels may request permission to enter a race area on VHF Channel 23A or through the Coast Guard Sector San Francisco Command Center via telephone at 415–399–3547.

(4) *Area Closed to All Motorized Vessels and Vessels Greater Than 20 Feet.* Within the Primary Regulated Area, the following area is established for swimmers, rowers, kayakers, and non-motorized vessels of 20 feet or less: The area bounded by a line beginning at position, 37°48′32″ N, 122°26′24″ W, running west to position 37°48′32″ N, 122°28′00″ W, running northwest to position 37°48′40″ N, 122°28′21″ W, running south to position 37°48′32″ N, 122°28′21″ W, running eastward along the City of San Francisco shoreline, and ending at the beginning position 37°48′32″ N, 122°26′24″ W. All coordinates are North American Datum 1983. This area is closed to all motorized vessels and all other vessels greater than 20 feet. All vessels are prohibited from anchoring in this designated area.

Note to paragraph (d)(4): This area contains an existing National Park Service Wildlife Protection Area (WPA), along Crissy Field extending 300 feet from shore, which is closed to all vessels. The WPA is established in the Golden Gate National Recreation Area's 2012 Superintendent's Compendium of Designations, Closures, Permit Requirements and Other Restrictions Imposed under Designated Authority. The Coast Guard regulation described in this paragraph does not supersede the National Park Service's existing regulations for this WPA.

(5) *No-Loitering Area.* No vessels may anchor or loiter in the navigable waters south of the 2013 Race Area, east of the area defined in paragraph (d)(4) of this section, and west of Aquatic Park, except with the permission of PATCOM.

(6) *Transit Zone.* Within the Primary Regulated Area, a transit zone, approximately 200 yards in width, is established along the City of San Francisco waterfront. The transit zone will begin at the face of Pier 23, run westward along the pier faces to the Municipal Pier, and continue westward to the northern boundary of the area defined in paragraph (d)(4) of this section. This transit zone is bounded by the following coordinates: 37°48′40″ N, 122°28′21″ W; 37°48′32″ N, 122°28′00″ W; 37°48′32″ N, 122°26′24″ W; 37°48′39″ N, 122°25′27″ W; 37°48′23″ N, 122°25′13″ W; 37°48′41″ N, 121°24′30″ W; 37°48′28″ N, 121°24′04″ W; 37°48′17″ N, 121°23′54″ W; 37°48′21″ N, 122°23′49″ W; 37°48′33″ N, 122°24′00″ W; 37°48′36″ N, 122°24′07″ W; 37°49′15″ N, 122°24′00″ W; 37°49′21″ N, 122°24′05″ W; 37°48′48″ N, 122°24′40″ W; 37°48′49″ N, 122°25′16″ W; 37°48′37″ N, 122°26′22″ W; 37°48′37″ N, 122°28′00″ W; 37°48′47″ N, 122°28′21″ W; (NAD 83). This transit zone is for vessels that need to access pier space or facilities at, or to transit along, the City of San Francisco waterfront. It may be marked by America's Cup support vessels. No vessel may anchor, block, loiter in, or otherwise impede transit in the transit zone. In the event the eastern sections of the transit zone are temporarily closed for vessel safety as races finish, vessels must follow the procedures in paragraph (d)(3) of this section to request access.

(7) *Anchorage 7 Restrictions.* No vessel may anchor in Anchorage No. 7, delineated at 33 CFR 110.224(e)(4), except with the permission of the COTP. Vessels encountering emergencies that require anchoring in Anchorage 7 should contact the Sector San Francisco Vessel Traffic System (VTS) on VHF Channel 14.

(8) *Closure of Shipping Lanes.* Eastbound and Westbound San Francisco Bay Traffic Lanes will be closed to all vessels greater than or equal to 100 gross tons. Vessel traffic will be permitted to operate during the America's Cup sailing races using the Deep Water (two-way) Traffic Lane established in 33 CFR 165.1181. Vessels of 100 gross tons or greater that need to enter or operate within the closed traffic lanes shall obtain permission from the COTP by contacting the VTS via VHF Channel 14.

(9) *Control of Vessel Movement to Ensure Safety.* (i) The COTP, or PATCOM as the designated representative of the COTP, may control the movement of all vessels operating on the navigable waters of San Francisco Bay when the COTP has determined that such orders are justified in the interest of safety by reason of weather, visibility, sea conditions, temporary port congestion, and other temporary hazardous circumstances.

(ii) When hailed or signaled by PATCOM, the hailed vessel must come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in additional operating restrictions, citation for failure to comply, or both.

(iii) The COTP may delay, shorten, or terminate any America's Cup race at any time it is deemed necessary to ensure safety.

(iv) After termination of the America's Cup races each day, the Coast Guard will issue a Broadcast Notice to Mariners to publicize the decision to resume normal operations.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 4. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 5. Add a new temporary section § 165.T11–0551 to read as follows:

§ 165.T11–0551 Safety Zone; America's Cup Sailing Events.

(a) *Definitions*—(1) *America's Cup Racing Vessel.* As used in this section, ''America's Cup Racing Vessel'' means an official competing vessel of the 34th America's Cup sailing events.

(2) *Patrol Commander.* As used in this section, ''Patrol Commander'' or ''PATCOM'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer, or a Federal, State, or local officer designated by the Captain of the Port San Francisco (COTP) to assist in the enforcement of the safety zone.

(b) *Location and enforcement period.* A safety zone extends 100 yards around America's Cup Racing Vessels from noon until 5 p.m. on program days between August 21, 2012, and August 26, 2012; and from 11 a.m. until 4 p.m. on program days between July 4, 2013, and September 23, 2013. The enforcement period may be curtailed earlier by the Captain of the Port (COTP) or Patrol Commander. Notice of the specific program dates and times will be issued via Broadcast Notice to Mariners and published by the Coast Guard in the **Federal Register**.

(c) *Regulations.* (1) The provisions of 33 CFR 165.23 apply to this safety zone. No person or vessel underway may enter or remain within 100 yards of an America's Cup Racing Vessel unless authorized by PATCOM.

(2) This safety zone shall not relieve any vessel, including America's Cup Racing Vessels, from the observance of the Navigation Rules.

(3) To request authorization to operate within 100 yards of an America's Cup Racing Vessel, contact PATCOM on VHF Channel 23A.

(4) When conditions permit, PATCOM should:

(i) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of America's Cup Racing Vessels in order to ensure a safe passage in accordance with the Navigation Rules; and

(ii) Permit vessels anchored in a designated anchorage area to remain at anchor when within 100 yards of a passing America's Cup Racing Vessel.

Dated: July 9, 2012.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2012–17305 Filed 7–16–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0545]

RIN 1625–AA00

Safety Zone; Port of Dutch Harbor; Dutch Harbor, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard establishes temporary safety zones in the navigable waters, from surface to seabed, of the Port of Dutch Harbor, Alaska, and the adjacent U.S. territorial sea from June 15, 2012, through July 31, 2012. The temporary safety zones will encompass the navigable waters within a 25-yard radius of moored or anchored Shell offshore exploration or support vessels, and the navigable waters within a 100-yard radius of underway Shell offshore exploration or support vessels. The purpose of the safety zones is to protect persons and vessels during an unusually high volume of vessel traffic in the Port of Dutch Harbor, Alaska, and the adjacent territorial sea due to additional vessel traffic associated with exploratory drilling operations in the Chukchi and Beaufort seas during the summer of 2012.

DATES: The temporary safety zones become effective on June 15, 2012, and terminate on August 1, 2012, unless sooner terminated by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0545 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0545 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CDR Adam Tyndale, U.S. Coast Guard, Sector Anchorage Response Department; telephone 907–271–6723, *Adam.J.Tyndale@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because Shell vessel operations in the Port of Dutch Harbor will begin within 15 days and the safety zone is a necessary measure to ensure safety of life and property, and the protection of the flow of commerce.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because immediate action is needed to minimize potential danger to the public during the period of time when there will be unusually high vessel traffic in the Port of Dutch Harbor and the adjacent territorial sea, and the event is scheduled to occur in less than 30 days.

Basis and Purpose

The legal basis for the rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1,6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorizes the Coast Guard to define regulatory safety zones.

Based on the expectation of increased maritime traffic due to the anticipated arrival of approximately twenty (20) vessels affiliated with planned offshore drilling operations in the Chukchi and Beaufort Seas during a period of time that the Port of Dutch Harbor normally experiences increased vessel traffic, the Coast Guard is establishing temporary safety zones to ensure the safe transit of vessels within the navigable waters, from surface to the seabed, of the Port of Dutch Harbor and adjacent waters extending seaward to the limits of the territorial sea.

The purpose of the established temporary safety zones is to facilitate safe navigation and protect vessels from hazards caused by increased volume of vessel traffic, including hazards that may be intentionally created, in the Port of Dutch Harbor, Broad Bay or adjacent navigable waters encompassed within the area from Cape Cheerful at 54–12.000 N 166–38.000 W north to the limits of the U.S. territorial sea, and from Princess Head at 53–59.000 N 166–25.900 W to the limits of the U.S. territorial sea.

Discussion of Rule

The Coast Guard is establishing safety zones in the navigable waters, from surface to seabed, within a 25-yard radius of moored or anchored Shell offshore exploration or support vessels, and the navigable waters, from surface to seabed, within a 100-yard radius of underway Shell offshore exploration or support vessels in the Port of Dutch Harbor, Alaska, and the adjacent U.S. territorial sea from June 15, 2012, through July 31, 2012. The purpose of the safety zones is to protect persons and vessels during an unusually high volume of vessel traffic in the Port of Dutch Harbor, Alaska.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The rule is not a significant regulatory action due to the minimal impact this will have on standard vessel operations within the Port of Dutch Harbor because of the limited area affected and the limited duration of the rule. The safety zones are also designed to allow vessels transiting through the area to safely travel around the safety zones without incurring additional cost or delay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ‘‘small entities’’ comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through or anchor within the Port of Dutch Harbor or adjacent waters, or transit through the waters in the near vicinity of the Port of Dutch Harbor from June 15, 2012 through July 31, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be effective from June 15, 2012 through July 31, 2012, and is limited only to waters, from surface to seabed, within 25 yards of the support vessel if the support vessel is moored or at anchor, and 100 yards if the support vessel is in transit.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule will not call for the collection of new information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ‘‘significant energy action’’ under that order because it is not a ‘‘significant regulatory action’’ under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects Under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph 34(g), of the Instruction. This rule involves establishing regulations for safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 46 U.S.C. Chapter 701, § 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0171.1.

■ 2. Add § 165.T17–0545 to read as follows:

§ 165.T17–0545 Safety Zone; Port of Dutch Harbor; Dutch Harbor, Alaska.

(a) *Location.* The following areas are safety zones:

(1) All navigable waters, from the surface to the seabed, within a 25-yard radius of moored or anchored offshore exploration or support vessel, as identified in paragraph (a)(2) of this section, or within a 100-yard radius of any underway offshore exploration or support vessel, as identified in paragraph (a)(2) of this section, located within the Port of Dutch Harbor, Broad Bay or adjacent navigable waters encompassed within the area from Cape Cheerful at 54–12.000 N 166–38.000 W north to the limits of the U.S. territorial sea, and from Princess Head at 53–59.000 N 166–25.900 W north to the limits of the U.S. territorial sea.

(2) The offshore exploration and support vessels to which safety zones apply are as follows: NORDICA, FENNICA, AIVIQ, TOR VIKING, HARVEY EXPLORER, HARVEY SPIRIT, SISUAQ, AFFINITY, the Barge TUUQ, LAUREN FOSS, ARCTIC SEAL, NANUQ, KLAMATH, GUARDSMAN, ENDEAVOR, OLIKTOK, CORBIN FOSS, ARCTIC CHALLENGER, NOBLE DISCOVERER, and KULLUK.

(b) *Effective date.* The temporary safety zones become effective on June 15, 2012, and terminate on August 1, 2012, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply to all vessels operating within the area described in paragraph (a) of this section.

(1) If a non-exploration or support vessel is moored or anchored and an offshore exploration or support vessel transits near them such that it places the moored or anchored vessel within the 100-yard safety zone described in paragraph (a), the moored or anchored vessel must remain stationary until the offshore exploration or support vessel maneuvers to a distance exceeding the 100-yard safety zone.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port (COTP) or designated on-scene representative, consisting of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed by the COTP's designated on-scene representative.

(3) Entry into the safety zone is prohibited unless authorized by the COTP or his designated on-scene representative. Any persons desiring to enter the safety zone must contact the designated on-scene representative on VHF channel 16 (156.800 MHz) and receive permission prior to entering.

(4) If permission is granted to transit within the safety zone, all persons and vessels must comply with the instructions of the designated on-scene representative.

(5) The COTP will notify the maritime and general public by marine information broadcast during the period of time that the safety zones are in force by providing notice in accordance with 33 CFR 165.7.

(d) *Penalties.* Persons and vessels violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: June 11, 2012.

J.A. Fosdick,

Captain, U.S. Coast Guard, Commander, Sector Anchorage.

[FR Doc. 2012–17223 Filed 7–16–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0368]

RIN 1625–AA00

Safety Zone, Atlantic Intracoastal Waterway; Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Atlantic Intracoastal Waterway at Wrightsville Beach, North Carolina. The safety zone will temporarily restrict vessel movement commencing Sept 1, 2012. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance on the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina.

DATES: This rule is effective from September 1, 2012 until May 1, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0368]. To view documents mentioned in this preamble as being available in the docket, go to *http://*

www.regulations.gov, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO4 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On May 23, 2012 a Notice of Proposed Rule Making (NPRM) was published in the **Federal Register** (77 FR 30445). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

North Carolina Department of Transportation has awarded a contract to American Bridge Company of Coraopolis, PA to perform bridge maintenance on the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina. The contract provides for cleaning, painting, steel repair, and grid floor replacement to commence on September 1, 2012 with a completion date of May 1, 2013. The contractor will utilize a 40 foot deck barge with a 40 foot beam as a work platform and for equipment staging. This safety zone will provide a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduced horizontal clearance. During this period the Coast Guard will require a one hour notification to the U.S. 74/76 Bascule Bridge tender at the Atlantic Intracoastal Waterway crossing, mile 283.1, Wrightsville Beach, North Carolina. The bridge notification requirement will apply during the maintenance period for vessels requiring a horizontal clearance of greater than 50 feet.

C. Discussion of Comments, Changes and the Final Rule

We received no comments on the proposed rule. No public meeting was requested, and none was held.

The temporary safety zone will encompass the waters directly under and 100 yards either side of the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina (34°13′07″ N, 077°48′46″ W). All vessels transiting this section of the waterway requiring a horizontal clearance of greater than 50 feet will be required to make a one hour advanced notification to the U.S. 74/76 Bascule Bridge tender while the safety zone is in effect. This zone will be in effect from 8 a.m. September 1, 2012 through 8 p.m. May 1, 2013

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule does not restrict traffic from transiting a portion of the Atlantic Intracoastal Waterway, it imposes a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 50 feet.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: The owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 a.m. September 1, 2012 through 8 p.m. May 1, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway. In addition, vessel traffic will be able to request passage by providing a one hour advanced notification.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0368 to read as follows:

§ 165.T05–0368 Safety Zone; Atlantic Intracoastal Waterway, Wrightsville Beach, NC.

(a) *Regulated Area.* The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina (34°13′07″ N/077°48′46″ W).

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0368. In addition the following regulations apply:

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port North Carolina.

(2) All vessels requiring greater than 50 feet horizontal clearance to safely transit through the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina must contact the bridge tender on VHF–FM marine band radio channels 13 and 16 one hour in advance of intended transit.

(3) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port North Carolina or his designated representative by telephone at (910) 343–3882 or on VHF–FM marine band radio channel 16.

(4) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(5) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions.* (1) *Captain of the Port North Carolina* means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 8 a.m. September 1, 2012 through 8 p.m. May 1, 2013 unless cancelled earlier by the Captain of the Port.

Dated: June 29, 2012.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port Sector North Carolina.

[FR Doc. 2012–17316 Filed 7–16–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0593]

Safety Zones; Annual Fireworks Events in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: At various times throughout the month of July, the Coast Guard will enforce certain safety zones located in 33 CFR 165.939. This action is necessary and intended for the safety of life and property on navigable waters during this event. During each enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

DATES: The regulations in 33 CFR 165.939 will be enforced on July 14, 2012 from 9:15 p.m. to 11:00 p.m., and again on July 28, 2012 from 9:00 p.m. to 10:30 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Waterways Management Division, Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203; Coast Guard telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zones; Annual Fireworks Events in the Captain of the Port Buffalo Zone listed in 33 CFR 165.939 for the following events:

(1) *Fairport Harbor Mardi Gras, Fairport Harbor, OH;* The safety zone listed in 33 CFR 165.939(a)(17) will be enforced from 9:00 p.m. to 10:20 p.m. on July 8, 2012.

(2) *French Festival Fireworks, Cape Vincent, NY;* The safety zone listed in 33 CFR 165.939(a)(3) from 9:15 p.m. to 11:00 p.m. on July 14, 2012.

(3) *Oswego Harborfest, Oswego, NY;* The safety zone listed in 33 CFR 165.939(a)(8) from 9:00 p.m. to 10:30 p.m. on July 28, 2012.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative. Those seeking permission to enter one of these safety zones may request permission from the Captain of the Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter one of these safety zones shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that one of these safety zones need not be enforced for the full duration stated in this notice he or she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: June 29, 2012.

S.M. Wischmann,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2012–17315 Filed 7–16–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0406; FRL–9699–1]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request submitted by the Indiana Department of Environmental Management (IDEM) on May 14, 2012, to revise the Indiana State Implementation Plan (SIP). The submission revises the Indiana Administrative Code (IAC) definition of ''References to the Code of Federal Regulations,'' from the 2009 edition to the 2011 edition.

DATES: This rule is effective on September 17, 2012, unless EPA receives adverse written comments by August 16, 2012. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0406 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312)692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0406. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?

A. When did the State submit the requested SIP revision to EPA?

IDEM submitted the requested SIP revision, consisting primarily of an updated reference to the 2011 Code of Federal Regulations (CFR), on May 14, 2012.

B. Did Indiana hold public hearings on this SIP revision?

IDEM held public hearings on February 1, 2012. IDEM did not receive any public comments concerning the SIP revision.

II. What revision did the State request be incorporated into the SIP?

The State has requested that the SIP revision include:

Rule 326 IAC 1–1–3, definition of ''References to Code of Federal Regulations.'' IDEM updated the reference to the CFR in 326 IAC 1–1–3 from the 2009 edition to the 2011 edition. This is solely an administrative change that allows Indiana to reference a more current version of the CFR. By amending 326 IAC 1–1–3 to reference the most current version of the CFR, the provision in Title 326 of the IAC will be consistent and current with federal regulations.

III. What action is EPA taking today?

We are approving a revisions to the Indiana SIP to update the definition at 326 IAC 1–1–3, ''References to the CFR,'' to refer to the 2011 edition.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective September 17, 2012 without further notice unless we receive relevant adverse written comments by August 16, 2012. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective September 17, 2012.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 27, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

■ 2. In § 52.770 the table in paragraph (c) is amended by revising the entry for 1–1–3 under Article 1, Rule 1, to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA Approval date	Notes
* * *	*	*	*	*
	Article 1. General Provisions			
Rule 1. Provisions Applicable Throughout Title 326				
* * *	*	*	*	*
1–1–3	References to the Code of Federal Regulations.	4/27/2012	7/17/2012, [Insert page number where the document begins].	
* * *	*	*	*	*

* * * * *

[FR Doc. 2012–17266 Filed 7–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0724, FRL–9676–6]

Approval and Promulgation of Implementation Plans; Idaho: Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Prevention of Significant Deterioration Greenhouse Gas Permitting Authority and Tailoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) submittals from the State of Idaho demonstrating that the Idaho SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. EPA finds that the current Idaho SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). EPA is taking no action on CAA section 110(a)(2)(E)(ii) at this time. We will address the requirements of this sub-element in a separate action. EPA is also approving a SIP revision that applies Idaho's Prevention of Significant Deterioration (PSD) Program to greenhouse gas (GHG) emitting sources above certain thresholds, updates Idaho's SIP to incorporate by reference revised versions of specific federal regulations, and removes unnecessary language from the SIP due to the incorporation by reference of the federal NAAQS and PSD regulations. In addition, EPA is rescinding the Federal Implementation Plan (FIP) put in place to ensure the availability of a permitting authority for greenhouse gas emitting sources in Idaho.

DATES: This action is effective on August 16, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2011–0724. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at telephone number: (206) 553–6357, email address: *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

Table of Contents

I. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone. EPA revised the ozone NAAQS to provide an 8-hour averaging period which replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). The CAA requires SIPs meeting the requirements of sections 110(a)(1) and (2) be submitted by states within 3 years after promulgation of a new or revised standard. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called ''infrastructure'' requirements. To help states meet this statutory requirement for the 1997 8-hour ozone NAAQS, EPA issued guidance to address infrastructure SIP elements under section 110(a)(1) and (2).[1] In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards. On September 15, 2008, the State of Idaho submitted a certification to EPA certifying that Idaho's SIP meets the infrastructure obligations for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. The certification included an analysis of Idaho's SIP as it relates to each section of the infrastructure requirements with regard to the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. Subsequently, on June 24, 2010, Idaho submitted an updated certification to EPA for sections 110(a)(2)(D) and 110(a)(2)(G). On April 11, 2012, EPA published a notice of proposed rulemaking (NPR) to act on Idaho's infrastructure SIP for the 1997 ozone NAAQS (77 FR 21702). Specifically in the NPR, EPA proposed approval of Idaho's SIP as meeting the requirements for the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). As discussed in the NPR, the proposed action did not address CAA section 110(a)(2)(E)(ii), which will be addressed in a separate action.

In the NPR, EPA also proposed to approve portions of the June 20, 2011, SIP revision submitted by Idaho that applies Idaho's PSD Program to GHG-emitting sources above certain thresholds, updates Idaho's SIP to incorporate by reference revised versions of specific federal regulations, and removes unnecessary language from the SIP due to the incorporation by reference of the federal NAAQS and PSD regulations. In addition, EPA proposed to rescind the FIP put in place to ensure the availability of a permitting authority for GHG-emitting sources in Idaho.

EPA provided a 30-day review and comment period on the NPR, published April 11, 2012 (77 FR 21702). The public comment period for EPA's NPR closed on May 11, 2012. EPA received no comments on the proposed action.

II. Scope of Action

Idaho has not demonstrated authority to implement and enforce Idaho Administrative Procedures Act (IDAPA) Chapter 58 within ''Indian Country'' as defined in 18 U.S.C. 1151.[2] Therefore, EPA proposes that this SIP approval not extend to ''Indian Country'' in Idaho. See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. See 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. See 61 FR 64622 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574 (October 4, 2001) (full approval does not extend to Indian Country).

III. Final Action

EPA is approving the SIP submittals from the State of Idaho demonstrating that the Idaho SIP meets the requirements of section 110(a)(1) and (2) of the CAA for the NAAQS promulgated for ozone on July 18, 1997. EPA is approving in full the following section 110(a)(2) infrastructure elements for Idaho for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), (M). EPA is taking no action on CAA section 110(a)(2)(E)(ii) at this time. EPA will address the requirements of this sub-element in a separate action. EPA is also approving a portion of Idaho's June 20, 2011, SIP submittal that applies Idaho's PSD Program to GHG-emitting sources at the emissions thresholds and in the same time frames as those specified in the Tailoring Rule (75 FR 31514, June 3, 2010). In conjunction with this approval of Idaho's PSD program for GHG-emitting sources, EPA is rescinding the FIP at 40 CFR 52.37 which provides for EPA to be the PSD permitting authority for GHG-emitting sources in Idaho.

EPA is also approving portions of Idaho's June 20, 2011, SIP submittal to revise the incorporation by reference of federal regulations revised as of July 1, 2010, in order to ensure Idaho's SIP is up to date with changes to federal regulations. EPA is not acting on the portions of the SIP revision that are not related to the criteria pollutants regulated under title I of the CAA or the requirements for SIPs under section 110 of the CAA. Finally, EPA is approving the removal of language from the Idaho SIP that has become unnecessary due to Idaho's incorporation by reference of the federal NAAQS and the federal PSD regulations. Specifically, EPA is approving the removal of the subsections of IDAPA 58.01.01.577 ''Ambient Air Quality Standards for Specific Pollutants'' that relate to pollutants for which EPA has promulgated a NAAQS, and which are now unnecessary because Idaho has incorporated the federal NAAQS by reference into the state SIP. EPA is also approving the changes to Idaho's PSD regulations at IDAPA 58.01.01.581.01 to remove the increments table in its entirety, and to instead reference the federal PSD increment requirements contained in 40 CFR 52.21(c), which are incorporated by reference in the Idaho SIP. This action is being taken under section 110 and part C of the CAA.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act.

[1] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.'' Memorandum to EPA Air Division Directors, Regions I–X, October 2, 2007.

[2] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 29, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart A—General Provisions

■ 2. § 52.37 is amended by removing and reserving paragraph (b)(4).

Subpart N—Idaho

■ 3. In § 52.670:

■ a. The table in paragraph (c) is amended by revising entry 107, removing entry 577, and revising entry 581.

■ b. The table in paragraph (e) is amended by adding an entry at the end of the table for ''Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour Ozone NAAQS.''

§ 52.670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IDAHO REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho				
*	*	*	*	*
107	Incorporations by Reference.	10/6/10, 5/8/09, 3/30/07, 3/20/04, 7/1/97, 5/1/94	7/17/2012 [Insert page number where the document begins].	Except Section 107.03(f) through (m) and (o).
*	*	*	*	*
581	Prevention of Significant Deterioration (PSD) Increments.	10/6/10, 4/11/06, 7/1/97, 5/1/94	7/17/2012 [Insert page number where the document begins].	
*	*	*	*	*

* * * * *

(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour Ozone NAAQS.	Statewide	9/15/2008, 6/24/2010	7/17/2012 [Insert page number where the document begins].	This action addresses following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2012–17277 Filed 7–16–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 20

[WTB: WT Docket No. 07–250; DA 12–550]

Hearing Aid Compatibility Technical Standard

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Wireless Telecommunications Bureau and the Office of Engineering and Technology (Bureaus) adopt the 2011 ANSI Standard for evaluating the hearing aid compatibility of wireless phones. The Bureaus take this action to ensure that a selection of digital wireless handset models is available to consumers with hearing loss.

DATES: These rules are effective August 16, 2012.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 16, 2012.

FOR FURTHER INFORMATION CONTACT: Michael Rowan, 202 418–1883, email *michael.rowan@fcc.gov,* or Saurbh Chhabra, 202 418–2266, email *saurbh.chhabra@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Wireless Telecommunications Bureau and the Office of Engineering and Technology's Third Report and Order in WT Docket 07–250, adopted April 9, 2012, and released April 9, 2012. The full text of the Third Report and Order is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Copies of the Third Report and Order also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 07–250. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

I. Introduction

1. The Federal Communications Commission (Commission) has wireless hearing aid compatibility rules to ensure that consumers with hearing loss are able to access wireless communications services through a wide selection of handsets without experiencing disabling radio frequency (RF) interference or other technical obstacles. In order to ensure that the hearing aid compatibility rules cover the greatest number of wireless handsets and reflect recent technological advances, the Wireless Telecommunications Bureau (WTB) and Office of Engineering and Technology (OET) (jointly the Bureaus) adopt in this Third Report and Order, pursuant to authority delegated by the Commission, the most current hearing aid compatibility technical standard.

2. The standard that the Bureaus adopt was developed through a voluntary, consensus-driven approach and is broadly supported by both industry and consumer groups. The Bureaus extend its appreciation for the efforts of the many parties involved in developing this standard. The Bureaus strongly encourage all parties to continue their efforts to refine and develop standards applicable to new telephone technologies that may create potential for interference with hearing aids.

II. Background

3. To ensure that a selection of digital wireless handset models is available to consumers with hearing loss, the Commission's rules require both manufacturers and service providers to meet defined benchmarks for deploying hearing aid-compatible wireless phones. Specifically, manufacturers and service providers are required to offer minimum numbers or percentages of handset models that meet technical standards for compatibility with hearing aids operating in both acoustic coupling and inductive coupling modes. These benchmarks apply separately to each air interface for which the manufacturer or service provider offers handsets.

4. To define and measure the hearing aid compatibility of handsets, the Commission's rules reference the 2007 revision of American National Standards Institute (ANSI) technical standard C63.19 (the ''2007 ANSI Standard''), formulated by the Accredited Standards Committee C63®—Electromagnetic Compatibility (ASC C63®). A handset is considered hearing aid-compatible for acoustic coupling if it meets a rating of at least M3 under the 2007 ANSI Standard. A handset is considered hearing aid-compatible for inductive coupling if it meets a rating of at least T3. The 2007 ANSI Standard specifies testing procedures for determining the M-rating and T-rating of digital wireless handsets that operate over the air interfaces that, at the time it was promulgated, were commonly used for wireless services in the 800–950 MHz and 1.6–2.5 GHz bands.

5. ASC C63® recently adopted an updated version of ANSI C63.19 (the ''2011 ANSI Standard''). The 2011 ANSI Standard was published on May 27, 2011, and ASC C63® subsequently requested that the Commission adopt this newer version of the standard into its rules. The 2011 ANSI Standard expands the operating frequency range for covered wireless devices to 698 MHz–6 GHz. It also establishes a direct method for measuring the RF interference level of wireless devices to hearing aids, which enables testing procedures to be applied to operations over any RF air interface or protocol. In addition, the 2011 ANSI Standard

exempts from testing certain low power transmitters that are unlikely to cause unacceptable RF interference to hearing aids and deems those transmitters to meet an acceptable M rating.

6. To ensure that the hearing aid compatibility standard codified in the rules remains current, the Commission has delegated to the Chief of WTB and the Chief of OET limited authority to update its rules as revisions to ANSI technical standard C63.19 are published. In particular, the Commission delegated the authority to conduct a notice-and-comment rulemaking proceeding on the use of future versions of the standard that do not raise major compliance issues. In addition, the Commission delegated authority to the Chief of WTB and the Chief of OET to conduct rulemaking proceedings to adopt future versions of the ANSI Standard that add frequency bands or air interfaces not covered by previous versions, if the new version does not impose materially greater obligations than those imposed on services already subject to the hearing aid compatibility rules. Under this delegated authority, the Bureaus shall set an effective date for new obligations imposed on manufacturers and Commercial Mobile Radio Service (CMRS) providers as a result of their adoption of technical standards for additional frequency bands and air interfaces that is no less than one year after release of the order for manufacturers and nationwide (Tier I) carriers and no less than 15 months after release for other service providers.

7. On November 1, 2011, the Bureaus released the *Second Further Notice,* which drew upon the request of ASC C63® to adopt the 2011 ANSI Standard as an applicable technical standard for evaluating the hearing aid compatibility of wireless handsets. *See* Amendment of the Commission's Rules Governing Hearing Aid Compatible Mobile Handsets, WT Docket No. 07–250, *Second Further Notice of Proposed Rulemaking,* 76 FR 77747, Dec. 14, 2011 (*Second Further Notice*). In the *Second Further Notice,* the Bureaus tentatively concluded to adopt the 2011 ANSI Standard. The Bureaus proposed a 12-month transition period during which multi-band and/or multi-mode handset models with certain operations not covered by the 2007 ANSI Standard could continue to be tested under that standard and launched as hearing aid-compatible with appropriate disclosure. The Bureaus also sought comment on whether a transition period of two years, with an additional three months for non-Tier I service providers, would be appropriate before applying handset deployment benchmarks to handset operations over air interfaces and frequency bands that are newly covered under the 2011 ANSI Standard.

III. Discussion

A. Adoption of the 2011 ANSI Standard

8. The Bureaus adopt the 2011 ANSI Standard, as proposed, as an applicable technical standard for evaluating the hearing aid compatibility of wireless phones. The commenters unanimously support this proposal. Codification of the 2011 ANSI Standard serves the public interest by applying the Commission's hearing aid compatibility rules to operations over additional frequency bands and air interface technologies. The new testing methodologies in the 2011 ANSI Standard will also greatly improve the measurement of potential hearing aid interference. The Bureaus find that adopting this new technical standard will not raise any major compliance issues or impose materially greater obligations with respect to newly covered frequency bands and air interfaces than those already imposed under the Commission's rules. The Bureaus also find no evidence that adopting the 2011 ANSI Standard will impose significant costs on manufacturers or service providers. If compliance costs increase significantly in the future, the Bureaus will evaluate any such future costs and address them as necessary in the Commission's ongoing hearing aid compatibility proceedings.

9. As set forth in the proposed rules in the *Second Further Notice,* the new rules will permit new handset models to be tested for certification using either the 2007 or 2011 ANSI Standard. All existing grants of certification issued under the 2007 ANSI Standard, as well as any pre-2010 grants under earlier versions of ANSI C63.19, remain valid, and no existing handset models will need to be retested or recertified as hearing aid-compatible. This is reflected in the rules both as proposed and as adopted. Consistent with existing rules that do not permit a handset model to be certified partly under one version of the ANSI Standard and partly under another, manufacturers must test each new handset model either exclusively under the 2007 ANSI Standard or exclusively under the 2011 ANSI Standard both during and after the 12-month transition period.

10. While supporting adoption of the 2011 ANSI Standard, some commenters ask the Commission to provide additional guidance on certain testing techniques under the standard so that test equipment can be developed and the relevant tests applied. In particular, Samsung Telecommunications America, LLC (Samsung) states that guidelines are required to facilitate use of the Modulation Interference Factor (MIF) testing technique. Similarly, some commenters contend that guidance is necessary to enable hearing aid compatibility testing under the 2011 ANSI Standard for Voice over Long Term Evolution (VoLTE) transmissions.[1] The Bureaus anticipate that the manufacturers and standards bodies working with OET will be able quickly to develop guidance for the MIF testing techniques and for determination of the M rating for VoLTE transmissions. To the extent such guidance has not been issued, OET will work with manufacturers to the extent of its authority so that the manufacturers can provide test reports that sufficiently demonstrate compliance with the rules as required by Section 2.1033(d) of the rules. The Bureaus recognize, however, that it may take longer to develop guidance for testing the inductive coupling capability of VoLTE transmissions under the 2011 ANSI Standard. Accordingly, until such guidance is issued, OET will adapt its certification procedures so that manufacturers can use the 2011 ANSI Standard for these handsets during a 12-month transition period. The Bureaus further note that under the newly adopted rules, as an alternative to using the 2011 ANSI Standard, handsets introduced during the 12-month transition period may be tested under the 2007 ANSI Standard for their operations that are covered under that standard and treated as hearing aid-compatible only for those operations. Finally, because Section 2.1033(d) currently refers to the U-ratings that were used in early versions of ANSI Standard C63.19, the Bureaus take this opportunity to conform this rule to the terminology used in the 2007 and 2011 ANSI Standards. The Bureaus find good cause not to provide public notice and an opportunity for comment on this rule change under Section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), because the change is purely ministerial and necessary to conform the Commission's written rules to ANSI Standard C63.19.

[1] VoLTE refers to the native voice capability of an LTE system, and it is distinguished from Voice over Internet Protocol capability that may be provided over LTE through a third-party application. Questions regarding hearing aid compatibility testing for voice capabilities offered through third-party applications will be addressed separately by the Commission.

11. In addition to the need for technical guidance, commenters raise two other issues related to the 2011 ANSI Standard. While it supports the standard's adoption, Hearing Industries Association (HIA) is concerned that certain low power devices that are deemed M4 without testing under the 2011 ANSI Standard because they are unlikely to cause interference may in fact cause interference to hearing aids. As HIA suggests, the Bureaus will work with ASC C63® to monitor how these handsets perform and will consider future action if needed. Also, several consumer groups, in light of the more accurate testing methodology under the 2011 ANSI Standard, advocate eliminating the existing rule that allows phones operating over the Global System for Mobile (GSM) air interface in the 1900 MHz band to be tested with reduced power under some circumstances. As the consumer groups acknowledge, this issue is outside the scope of the *Second Further Notice,* and the Commission will address it separately.

B. Transitional Testing and Disclosure Requirements for Multi-Band and Multi-Mode Handsets

12. As proposed in the *Second Further Notice* and in Multi-Band Principles that were previously developed by a working group of industry and consumer representatives, the Bureaus adopt a 12-month transition period for testing of multi-band and multi-mode handsets that incorporate operations which are not covered under the 2007 ANSI Standard. Specifically, for the 12 months following **Federal Register** publication of rules adopting the 2011 ANSI Standard, as an alternative to using the 2011 ANSI Standard, the Bureaus will permit manufacturers to certify such handsets as hearing aid-compatible if they meet hearing aid compatibility criteria under the 2007 ANSI Standard for all operations covered under that standard, provided they meet requisite disclosure obligations. After the end of the 12-month transition period, any new handset model containing operations that are not covered under the 2007 ANSI Standard will have to meet hearing aid compatibility criteria under the 2011 ANSI Standard for all of its operations in order to be considered hearing aid-compatible over any air interface. Handset models that are certified under the transitional rule during the 12-month transition period, however, may continue to be counted and marketed as hearing aid-compatible after the transition period has ended without additional testing or certification.

13. Several commenters explicitly support adopting a transition period for testing of handsets with newly covered operations, and none oppose this proposal. The transitional rule recognizes that at the time the new rules become effective, some manufacturers will be in product fabrication cycles where it will be impractical to initiate testing of upcoming multi-band or multi-mode handsets under the 2011 ANSI Standard. It is also possible, although unlikely, that multi-band or multi-mode handsets may be planned for near-term introduction that meet the hearing aid compatibility criteria for their operations that are covered under the 2007 ANSI Standard but do not meet those criteria for newly covered operations under the 2011 ANSI Standard. Accordingly, a transition period will ease the burden on handset manufacturers that are close to introducing handsets that would have met hearing aid compatibility requirements under the old rules, but that without an accommodation would require retesting, or in some cases redesign, to be hearing aid-compatible under the new rules.

14. Most commenters that address the issue support the 12-month transition period proposed in the *Second Further Notice* as sufficient to meet manufacturers' needs. Telecommunications Industry Association (TIA) argues that a 24-month transition period is needed to allow sufficient time for laboratory equipment to be developed and tested, as well as to accommodate possible parts shortages and other unexpected developments. In its comments, TIA does not distinguish clearly between the transition period for multi-band and multi-mode testing and the transition period for applying deployment benchmarks, and to the extent it is concerned about uncertainties that may affect when models can be introduced to or withdrawn from the market, its arguments appear to pertain only to the separate transition for applying existing deployment benchmarks. To the extent TIA is concerned about the availability of testing equipment, the Bureaus note that nearly 10 months have already passed since the 2011 ANSI Standard was published, and that manufacturers have had the opportunity to use that time to develop such equipment. The Bureaus are not persuaded that an additional 24 months is needed, particularly in light of the other comments from manufacturers and service providers indicating that 12 months is sufficient.

15. The Bureaus clarify that during the 12-month transition period, manufacturers that choose to test a multi-band and/or multi-mode handset model only for those operations covered under the 2007 ANSI Standard must use the 2007 ANSI Standard for such testing. Conversely, if manufacturers choose to use the 2011 ANSI Standard, they must test all operations in the handset that fall within the 2011 ANSI Standard, subject only to an accommodation for VoLTE transmissions. The Bureaus find that permitting use of the 2011 ANSI Standard to test only those operations covered under the 2007 ANSI Standard would be confusing and would discourage early testing of newly covered air interfaces and frequency bands. Accordingly, the Bureaus revise Section 20.19(b)(3)(ii) of the proposed rule to clarify that the 2007 ANSI Standard must be used for these tests during the 12-month transition period. Some commenters express concern that, given the lack of guidance for testing the inductive coupling capability of VoLTE transmissions, a simple choice between these two alternatives would make it impossible to test any handset with VoLTE capability under the 2011 ANSI Standard for any of its operations. In recognition of this concern, until such guidance is issued during the 12-month transition period, OET will permit handsets to be certified for inductive coupling under the 2011 ANSI Standard if they meet at least a T3 rating for all operations covered under that standard other than for VoLTE. Alternatively, to the extent a manufacturer is able to test inductive coupling capability for VoLTE transmissions under the 2011 ANSI Standard prior to the issuance of general guidance, OET will accept such testing if it meets OET's standards under 47 CFR 2.1033(d). Manufacturers and service providers will be required to disclose when handsets have not been tested for all their operations. The Bureaus expect that during the next 12 months, industry members will work with the standards bodies to finalize all guidance necessary to facilitate full application of the 2011 ANSI Standard, and the Bureaus will provide all possible support to this endeavor. In the event sufficient testing guidance has not been completed by the end of the 12-month period, the Bureaus will recommend that the Commission address this issue.

16. The Commission's existing rules require manufacturers and service providers to inform consumers, using specific prescribed language, when handsets designated as hearing aid-

compatible have not been tested over some of their operations. *See* 47 CFR 20.19(f)(2). This requirement will continue to apply to handsets introduced during the 12-month transition period that the manufacturer has not tested for newly covered operations. However, during the 12-month transition period, there may be handsets that the manufacturer tests and finds not to meet hearing aid compatibility requirements for newly covered operations under the 2011 ANSI Standard. The manufacturer may submit such handsets for certification based on hearing aid compatibility ratings under the 2007 ANSI Standard for operations covered by that standard. The Bureaus proposed in the *Second Further Notice* to require manufacturers and service providers to disclose to consumers that operations in these handsets had been tested and found not to be hearing aid-compatible. The Bureaus further proposed not to require specific language for this disclosure, but to rely on a general disclosure requirement backed by case-by-case resolution of disputes. In their comments, several consumer groups and HIA each propose specific disclosure language that they say should be required.[2] These parties argue that the Bureaus should prescribe language to fully inform consumers and to remove any possibility of inconsistent information. Other commenters, however, oppose prescribing language so as to maintain their flexibility to disclose the most relevant information about a particular handset model.

17. While the Bureaus recognize that uniform disclosure language can provide benefits of certainty to both regulated entities and consumers, the Bureaus decline to prescribe such language here. Instead, the Bureaus require generally that manufacturers and service providers inform users by clear and effective means about any operations in a hearing aid-compatible handset model that they tested under the 2011 ANSI Standard and found not to meet hearing aid compatibility requirements under that standard. The Bureaus recognize that the Commission already requires specific disclosure language for handset models that have not been tested for some of their operations, and the rule continues to require such disclosure for these handsets, including handsets introduced during the 12-month transition period that the manufacturer has not tested for newly covered operations. *See* 47 CFR 20.19(f)(2). Unlike that case, however, there is no consensus in the record on specific language to be used for handset models that the manufacturer has tested and found to be non-compliant under the 2011 ANSI Standard for some of their operations, and indeed several commenters oppose prescribing specific language.

18. In the absence of a consensus or a demonstrated problem, the Bureaus find it prudent not to prescribe language that may hinder regulated entities from developing and employing more effective disclosures. Moreover, as explained in the *Second Further Notice,* it is likely that few handsets that meet hearing aid compatibility standards for operations that are covered under the 2007 ANSI Standard will not also meet the hearing aid compatibility standards for newly covered operations. Nonetheless, the Bureaus note that the language proposed by the consumer groups appears to provide appropriate information to consumers, and to the extent it is applicable to their particular circumstances, the Bureaus encourage manufacturers and service providers to consider modeling their disclosures on this language. The Bureaus note that the consumer groups modeled their disclosure after the existing language for handsets with untested operations that was previously agreed to by representatives of all interests. The Bureaus will resolve any disputes over the adequacy of individual disclosures on a case-by-case basis. In addition, the Bureaus will revisit the possibility of prescribing disclosure language in the event disputes or misunderstandings develop in practice.

19. The Bureaus find that the language in Section 20.19(f)(2) will also constitute sufficient disclosure for multi-band and/or multi-mode handsets tested under the 2011 ANSI Standard during the 12-month transition period that have not been tested for inductive coupling capability over VoLTE transmissions. Alternatively, manufacturers or service providers may develop more descriptive and informative disclosure language for these handsets. The Bureaus advise manufacturers and service providers to consult with WTB staff before using any alternative language.

C. Transition Period for Applying Deployment Benchmarks

20. The 2011 ANSI Standard enables handsets to be tested for hearing aid compatibility over a broad range of frequency bands and independent of air interface technology. Therefore, following the adoption of this new standard and completion of the applicable transition period, the Commission's benchmark rules for hearing aid-compatible handset deployment will apply to handset operations over additional air interfaces and frequency bands. Under 47 CFR 20.19(k)(1), the Bureaus shall set the date when existing deployment benchmarks, and other attendant Section 20.19 hearing aid compatibility obligations, shall begin to apply to handset operations over newly covered air interfaces and frequency bands no earlier than one year after release of the order for manufacturers and Tier I carriers and no earlier than 15 months after release for other service providers.

21. As proposed in the *Second Further Notice,* the Bureaus adopt a 24-month transition period for manufacturers and Tier I service providers, and 27 months for non-Tier I service providers, to apply the Commission's existing deployment benchmarks to handset operations over air interfaces and frequency bands that are not covered under the 2007 ANSI Standard but are covered under the 2011 ANSI Standard. Several consumer groups argue that the Bureaus should adopt the minimum permissible 12-month and 15-month transition periods in order to serve the needs of consumers with hearing loss, stating that the changes in the standard are not dramatic and that manufacturers and service providers have had ample time to anticipate any possible effects. Indeed, the consumer groups state that they would prefer an even tighter schedule. HIA also states generally that it supports expeditious transition periods. Other commenters contend, however, that a longer, two-year period is necessary to allow affected parties to adjust existing handset inventories.

22. While the Bureaus recognize that a shorter transition period would benefit consumers if sufficient hearing aid-compatible models were in fact made available within that period to meet the benchmarks, the Bureaus are not persuaded that meeting these targets is generally feasible for manufacturers and service providers. Meeting deployment benchmarks requires not only that hearing aid-compatible handsets be designed and tested under the new standard, but that manufacturers and service providers adjust their portfolios over each air interface to include sufficient numbers of models to meet the benchmarks. Moreover, under the newly adopted rules, many new handset models may not even be tested under the new standard during the first 12

[2] The consumer groups also propose requirements regarding the font and location of the disclosure. These matters are outside the scope of the *Second Further Notice,* and they will be addressed separately by the Commission.

months. The Bureaus agree with CTIA—The Wireless Association (CTIA) that the 12-month transition period for testing will help ensure that handsets tested under the 2011 ANSI HAC Standard will be available to service providers and manufacturers so that they can be offered to consumers within the 24-month benchmark compliance period. The Bureaus also note that a two-year transition period for applying hearing aid compatibility benchmarks and other requirements is consistent with the Commission's proposals in a separate pending Notice for wireless handsets that fall outside the subset of CMRS that is currently covered by Section 20.19(a) of the rules. While the Bureaus expect manufacturers and service providers to begin offering hearing aid-compatible handsets over the newly covered air interfaces and frequency bands well before the end of the transition period, the Bureaus agree with most of the commenters that a two-year period will appropriately accommodate their design, engineering, and marketing needs as they adjust their inventories to offer enough of these handset models to meet the benchmarks. In order to ease the burdens on non-Tier I service providers that often have difficulty obtaining the newest handset models, the Bureaus afford these providers an additional three months to meet newly applicable deployment benchmarks.

IV. Procedural Matters

A. Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Further Notice of Proposed Rulemaking.* The Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) (jointly the Bureaus) sought written public comment on the proposals in the *Second Further Notice,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

24. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band, the Bureaus believe that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this FRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this Third Report and Order, including spectrum in the 746–806 MHz Band.

1. Need for, and Objectives of, the Third Report and Order

25. The Third Report and Order amends Section 20.19 of the Commission's rules by adopting the new ANSI C63.19–2011 standard (the ''2011 ANSI Standard'') as an applicable hearing aid compatibility technical standard. The standard specifies testing procedures to establish the M-rating (acoustic coupling) and T-rating (inductive coupling) to gauge the hearing aid compatibility of handsets. Specifically, the Third Report and Order finds that adoption of the new 2011 ANSI Standard will raise no major compliance issues and will not impose materially greater obligations with respect to proposed newly covered frequency bands and air interfaces than those already imposed under the Commission's rules. By bringing operations over additional frequency bands and air interfaces under the hearing aid compatibility regime, and by aligning the Commission's rules with the most current measurement practices, this rule change will help ensure that consumers with hearing loss are able to access wireless communications services through a wide selection of handsets without experiencing disabling interference or other technical obstacles.

26. Under the rules that the Bureaus adopt, a manufacturer is permitted to submit handsets for certification using either ANSI C63.19–2007 (''the 2007 ANSI Standard'') or the 2011 ANSI Standard. A multi-band and/or multi-mode handset model launched earlier than 12 months after **Federal Register** publication of these rules codifying the 2011 ANSI Standard may be considered hearing aid-compatible if its operations that are covered under the current 2007 ANSI Standard meet the requirements for hearing aid compatibility, as determined under the 2007 ANSI Standard. For multi-band and/or multi-mode handset models launched after this period, as well as for handset models that only include operations covered under the 2007 ANSI Standard, the Commission will continue to apply the current principle that a handset model must meet ANSI C63.19 technical standards over all frequency bands and air interfaces over which it operates in order to be considered hearing aid-compatible over any air interface. The purpose of the transitional rule for models launched within 12 months after **Federal Register** publication is to limit the compliance burdens on businesses, both large and small, with respect to handset models that are already deployed or in development at the time these final rules become effective.

27. The Third Report and Order also adopts rules to phase in over a defined period of time expanded handset deployment requirements that result from adopting the 2011 ANSI Standard. The Bureaus adopt a two-year period for applying the hearing aid-compatible handset deployment benchmarks to handset operations over newly covered air interfaces and frequency bands. The Bureaus also afford non-Tier I service providers three months additional time to meet these deployment benchmarks in order to account for the difficulties they face in timely obtaining new handset models. The purpose of this rule change is to create a time frame for implementation that would be the most efficient and least burdensome for businesses, both large and small, while ensuring that consumers with hearing loss have timely access to wireless communications.

28. Finally, the Third Report and Order adopts a requirement that manufacturers and service providers disclose the hearing aid compatibility status of handsets that meet hearing aid compatibility criteria over previously covered frequency bands or air interfaces but have been tested and found not to meet such criteria over frequency bands or air interfaces that are outside the 2007 ANSI Standard. The Third Report and Order declines to require specific language for this disclosure. This rule change is a minimally intrusive means of ensuring that consumers with hearing loss have the information they need to choose a handset that will operate compatibly with their hearing aid or cochlear implant.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

29. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

30. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small

business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

31. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Bureaus' action may, over time, affect small entities that are not easily categorized at present. The Bureaus therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. The Bureaus estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, the Bureaus estimate that most governmental jurisdictions are small.

32. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category ''Wireless Telecommunications Carriers (except satellite).'' Under that SBA category, a business is small if it has 1,500 or fewer employees. The census category of ''Cellular and Other Wireless Telecommunications'' is no longer used and has been superseded by the larger category ''Wireless Telecommunications Carriers (except satellite)''. The Census Bureau defines this larger category to include ''* * * establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.''

33. In this category, the SBA has deemed a wireless telecommunications carrier to be small if it has fewer than 1,500 employees. For this category of carriers, Census data for 2007 shows 1,383 firms in this category. Of these 1,383 firms, only 15 (approximately 1%) had 1,000 or more employees. While there is no precise Census data on the number of firms in the group with fewer than 1,500 employees, it is clear that at least the 1,368 firms with fewer than 1,000 employees would be found in that group. Thus, at least 1,368 of these 1,383 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the Commission estimates that at least 1,368 (approximately 99%) had fewer than 1,500 employees and, thus, would be considered small under the applicable SBA size standard.

34. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the re-auction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

35. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

36. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 Basic Economic Area licenses. One bidder claiming small business status won five licenses.

37. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders that won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed ''small business'' status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic area licenses in the 800 MHz SMR band claimed status as small business.

38. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended

implementation authorizations in the 800 and 900 MHz bands. The Bureaus do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, the Bureaus do not know how many of these firms have 1,500 or fewer employees. The Bureaus assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

39. *Advanced Wireless Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. In 2006, the Commission conducted its first auction of AWS–1 licenses. In that initial AWS-1 auction, 31 winning bidders identified themselves as very small businesses. Twenty-six of the winning bidders identified themselves as small businesses. In a subsequent 2008 auction, the Commission offered 35 AWS–1 licenses. Four winning bidders identified themselves as very small businesses, and three of the winning bidders identified themselves as small businesses. For AWS–2 and AWS–3, although the Bureaus do not know for certain which entities are likely to apply for these frequencies, the Bureaus note that these bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but has proposed to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

40. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). In the present context, the Bureaus will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Bureaus estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

41. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

42. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order,* the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area (''MEA'') licenses. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

43. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

44. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) was conducted in 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. Seventeen winning bidders claimed small or very small business status, and nine winning bidders claimed entrepreneur status. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band. All three winning bidders claimed small business status.

45. In 2007, the Commission reexamined its rules governing the 700 MHz band. An auction of A, B and E block 700 MHz licenses was held in 2008. Twenty winning bidders claimed small business status (those with

attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

46. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of Offshore Radiotelephone Service licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007 show that there were 1,383 firms in this category that operated that year. Of those 1,383, 1,368 had fewer than 1,000 employees, and 15 firms had more than 1,000 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

47. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Bureaus estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Bureaus find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA standard or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

48. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Bureaus estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' For these services, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services the Bureaus must, however, use the most current census data. Census data for 2007 show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

49. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands. Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding $40 million as a ''small business,'' and an entity with average annual gross revenues for the three preceding years not exceeding $15 million as a ''very small business.'' SBA has approved these small business size standards for the aforementioned bands. Correspondingly, the Commission adopted a bidding credit of 15 percent for ''small businesses'' and a bidding credit of 25 percent for ''very small businesses.'' This bidding credit structure was found to have been consistent with the Commission's schedule of bidding credits, which may be found at Section 1.2110(f)(2) of the Commission's rules. The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services. The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

50. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments

primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had fewer than 500 employees and 155 had more than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

51. The rules will not impose any new reporting or recordkeeping requirements on small entities. As described in Section A of this FRFA, manufacturers and service providers, including small entities, will be required after a transition period, when applying the existing hearing aid-compatible handset deployment benchmarks, to include handset operations over air interfaces and frequency bands that are newly covered under the 2011 ANSI Standard. Non-Tier I carriers, many of which are small entities, will have an additional three months to meet this requirement. For handset models introduced during the first 12 months after the rules are published in the **Federal Register**, manufacturers and service providers will be required, when disclosing hearing aid compatibility information about a handset, to indicate if a handset has been tested and found not to meet hearing aid compatibility criteria over frequency bands and air interfaces that are outside the 2007 ANSI Standard. Manufacturers and service providers, including small entities, are already subject to similar requirements under the existing hearing aid compatibility rules, and the new rules will not impose materially greater compliance obligations on these entities.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

52. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

53. In adopting the Third Report and Order, the Bureaus codify the new 2011 ANSI Standard as an applicable technical standard, in addition to the 2007 ANSI Standard, for evaluating the hearing aid compatibility of wireless phones. Permitting a choice of standards within the rule may ease burdens on manufacturers, including small entities. Commenters, including those representing the interests of small wireless carriers, requested that the Bureaus clarify that handsets already certified under the 2007 ANSI Standard will continue to be treated as hearing aid-compatible without any need for recertification. Under the new rules, existing handset models will not need to be retested or recertified as hearing aid-compatible.

54. The Bureaus also adopt a 12-month transition period for testing of new multi-band and multi-mode handset models in order to reduce burdens on small entities and others with respect to handset models that are currently in development. Under the new rules, multi-band and multi-mode handset models launched earlier than 12 months after **Federal Register** publication of these rule changes will be considered hearing aid-compatible for operations covered under the 2007 ANSI Standard even if they are not certified as hearing aid-compatible for their other operations. The Bureaus considered the alternative proposal of a 24-month testing transition period. The Bureaus conclude based on all the comments that a 12-month period is sufficient for manufacturers, including small entities, to arrange for testing under the new rules of their products that are in development, and that a shorter period would better meet the needs of consumers with hearing loss.

55. For handsets launched during the 12-month transition period that meet hearing aid compatibility criteria over previously covered air interfaces and frequency bands, but that have been tested and found not to meet such criteria over one or more newly covered air interfaces or frequency bands, the new rules require that manufacturers and service providers disclose to consumers by clear and effective means that the handset does not meet hearing aid compatibility ratings for some of its operations. The Bureaus considered the alternative proposal of prescribing specific disclosure language, but the Bureaus find it more prudent to rely on a general disclosure requirement backed by case-by-case resolution in the event of disputes given the lack of consensus for specific language and the fact that the situation is likely rarely to occur. Nonetheless, to the extent it will reduce burdens for affected small entities, the Bureaus encourage them to consider modeling their disclosures on language proposed by groups representing the interest of consumers with hearing loss.

56. Finally, the Bureaus adopt a transition period before the deployment benchmark rules set forth in paragraphs (c) and (d) of Section 20.19 begin to apply to handset operations over newly covered frequency bands and air interfaces. The Bureaus sought comment on several alternatives in order to appropriately balance the design, engineering, and marketing requirements of manufacturers and service providers with the needs of consumers with hearing loss for compatible handsets that operate over the newest network technologies. While the Bureaus adopt a 24-month transition period for manufacturers and Tier I service providers, the Bureaus afford non-Tier I service providers, including small entities, an additional three months before the expanded benchmark requirements become applicable to them. The Bureaus take this step in order to ease the burden of compliance on these entities that often have difficulty obtaining the newest handset models.

57. *Report to Congress:* The Commission will send a copy of the Third Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Third Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Third Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Final Paperwork Reduction Act Analysis

58. This Third Report and Order does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business

concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

59. The Commission will include a copy of this Third Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

V. Ordering Clauses

60. Accordingly, *it is ordered,* pursuant to sections 4(i), 303(r), and 710 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r), and 610, that this Third Report and Order *is hereby adopted.*

61. *It is further ordered* that Parts 2 and 20 of the Commission's Rules, 47 CFR Parts 2 and 20, ARE AMENDED, effective 30 days after publication of the Third Report and Order in the **Federal Register**.

62. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

63. This action is taken under delegated authority pursuant to Sections 0.241(a)(1), 0.331(d), and 20.19(k) of the Commission's rules, 47 CFR 0.241(a)(1), 0.331(d), and 20.19(k).

List of Subjects

47 CFR Part 2

Communications equipment, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 20

Communications common carriers, Communications equipment, Incorporation by reference, Radio.

Federal Communications Commission.

Jane E. Jackson,

Associate Chief, Wireless Telecommunications Bureau.

Ronald Repasi,

Deputy Chief, Office of Engineering and Technology.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends parts 2 and 20 of title 47 of the Code of Federal Regulations as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.1033 is amended by revising paragraph (d) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(d) Applications for certification of equipment operating under part 20 of this chapter, that a manufacturer is seeking to certify as hearing aid compatible, as set forth in § 20.19 of this chapter, shall include a statement indicating compliance with the test requirements of § 20.19 of this chapter and indicating the appropriate M-rating and T-rating for the equipment. The manufacturer of the equipment shall be responsible for maintaining the test results.

* * * * *

PART 20—COMMERCIAL MOBILE SERVICES

■ 3. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 301, 303, 316, and 332 unless otherwise noted. Section 20.12 is also issued under 47 U.S.C. 1302.

■ 4. Section 20.19 is amended by:
■ a. Revising paragraph (a)(1),
■ b. Removing the introductory text from paragraph (b),
■ c. Revising paragraphs (b)(1) and (b)(2),
■ d. Adding paragraph (b)(3),
■ e. Removing paragraph (b)(5),
■ f. Revising paragraphs (c) introductory text, (d) introductory text,
■ g. Adding introductory text to paragraph (f)(2),
■ h. Revising paragraph (f)(2)(i), and
■ i. Adding paragraphs (f)(2)(iii) and (l).

The additions and revisions read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

(a) * * *

(1) The hearing aid compatibility requirements of this section apply to providers of digital CMRS in the United States to the extent that they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls, and such service is provided over frequencies in the 698 MHz to 6 GHz bands.

* * * * *

(b) *Hearing aid compatibility; technical standards*—(1) *For radio frequency interference.* A wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the M3 rating associated with the technical standard set forth in either the standard document ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2007 or ANSI C63.19–2011. Any grants of certification issued before January 1, 2010, under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(2) *For inductive coupling.* A wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the T3 rating associated with the technical standard set forth in either the standard document ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2007 or ANSI C63.19–2011. Any grants of certification issued before January 1, 2010, under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(3) *Handsets operating over multiple frequency bands or air interfaces.* (i) Except as provided in paragraph (b)(3)(ii) of this section, a wireless handset used for digital CMRS only over the 698 MHz to 6 GHz frequency bands is hearing aid-compatible with regard to radio frequency interference or inductive coupling if it meets the applicable technical standard set forth in paragraph (b)(1) or (b)(2) of this section for all frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the applicable standard pursuant to § 2.1033(d) of this chapter. A wireless handset that incorporates operations outside the 698 MHz to 6 GHz frequency bands is hearing aid-compatible if the handset otherwise satisfies the requirements of this paragraph.

(ii) A handset that is introduced by the manufacturer prior to July 17, 2013, and that does not meet the requirements for hearing aid compatibility under paragraph (b)(3)(i) of this section, is hearing aid-compatible for radio frequency interference or inductive coupling only with respect to those frequency bands and air interfaces for which technical standards are stated in ANSI C63.19–2007 if it meets, at a minimum, an M3 rating (for radio frequency interference) or a T3 rating (for inductive coupling) under ANSI C63.19–2007 for all such frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the applicable standard pursuant to § 2.1033(d) of this chapter.

* * * * *

(c) Phase-in of requirements relating to radio frequency interference. The following applies to each manufacturer and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) of this section and that does not fall within the *de minimis* exception set forth in paragraph (e) of this section. However, prior to July 17, 2014 for manufacturers and Tier I carriers and October 17, 2014 for service providers other than Tier I carriers, the requirements of this section do not apply to handset operations over frequency bands and air interfaces for which technical standards are not stated in ANSI C63.19–2007.

* * * * *

(d) Phase-in of requirements relating to inductive coupling capability. The following applies to each manufacturer and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) of this section and that does not fall within the *de minimis* exception set forth in paragraph (e) of this section. However, prior to July 17, 2014 for manufacturers and Tier I carriers and October 17, 2014 for service providers other than Tier I carriers, the requirements of this section do not apply to handset operations over frequency bands and air interfaces for which technical standards are not stated in ANSI C63.19–2007.

* * * * *

(f) * * *

(2) Disclosure requirements relating to handsets treated as hearing aid-compatible over fewer than all their operations.

(i) Each manufacturer and service provider shall ensure that, wherever it provides hearing aid compatibility ratings for a handset that is considered hearing aid-compatible under paragraph (b)(3)(ii) of this section only with respect to those frequency bands and air interfaces for which technical standards are stated in ANSI C63.19–2007 and that has not been tested for hearing aid compatibility under ANSI C63.19–2011, or any handset that operates over frequencies outside of the 698 MHz to 6 GHz bands, it discloses to consumers, by clear and effective means (e.g., inclusion of call-out cards or other media, revisions to packaging materials, supplying of information on Web sites), that the handset has not been rated for hearing aid compatibility with respect to some of its operation(s). This disclosure shall include the following language:

This phone has been tested and rated for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer.

* * * * *

(iii) Each manufacturer and service provider shall ensure that, wherever it provides hearing aid compatibility ratings for a handset that is considered hearing aid-compatible under paragraph (b)(3)(ii) of this section only with respect to those frequency bands and air interfaces for which technical standards are stated in ANSI C63.19–2007, and that the manufacturer has tested and found not to meet hearing aid compatibility requirements under ANSI C63.19–2011 for operations over one or more air interfaces or frequency bands for which technical standards are not stated in ANSI C63.19–2007, it discloses to consumers, by clear and effective means (e.g., inclusion of call-out cards or other media, revisions to packaging materials, supplying of information on Web sites), that the handset does not meet the relevant rating or ratings with respect to such operation(s).

* * * * *

(l) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than those specified in this section, the FCC must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Federal Communications Commission (FCC), 445 12th St. SW., Reference Information Center, Room CY–A257, Washington, DC 20554 and is available from the sources indicated below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm*

(1) IEEE Operations Center, 445 Hoes Lane, Piscataway, NJ 08854–4141, (732) 981–0060, *http://www.ieee.org/portal/site.*

(i) ANSI C63.19–2007, American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, June 8, 2007

(ii) ANSI C63.19–2011, American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, May 27, 2011

(2) [Reserved]

[FR Doc. 2012–17113 Filed 7–16–12; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 77, No. 137
Tuesday, July 17, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2012–0714]

Bleed Air Cleaning and Monitoring Equipment and Technology

ACTION: Notice; request for information.

SUMMARY: The FAA seeks information from industry developers, manufacturers, and the public related to effective air cleaning technology and sensor technology for the engine and auxiliary power unit bleed air supplied to the passenger cabin and flight deck of a pressurized aircraft. The information obtained will inform the agency of potential research and development plans.

DATES: Written comments must be received on or before September 17, 2012.

ADDRESSES: Send comments identified by docket number FAA–2012–0714 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Jim Knight, Research Planning Division, AVP–300, Office of Accident Investigation and Prevention, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 493–5634, email *james.knight@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 917 of the approved FAA Modernization and Reform Act of 2012, H.R. Bill 658, requires the FAA to identify bleed air purification technology. Specifically, the FAA seeks information about bleed air cleaning, and contaminant detection and recording technologies which are capable of removing oil-based contaminants from the bleed air supplied to the passenger cabin and flight deck, and detecting and recording oil-based contaminants in the total air supplied to the passenger cabin and flight deck from bleed air.

The FAA recognizes there are various design concepts used by both developers and manufacturers of cabin air environmental control units. Given the design and performance variation in these technologies, the FAA seeks information from the industry to assist in its evaluation of the types of air cleaning and monitoring technology that will successfully detect, remove and report on engine-produced, oil-based cabin air contaminants.

Request for Information

The FAA requests that the comments specifically address the following areas to this notice:

- Design and operational description
- Physical dimensions of the device(s), including weight
- Power, interconnect, and other installation requirements
- Operational dimensions for the technology/system
- Maintenance needs to assure system performance
- Safety mechanisms designed into the technology/system to minimize or mitigate anticipated hazards

For detection technologies, please identify:

- Contaminants the device can detect and sensitivity for each
- Location of the detection device placed in the air distribution system

For air cleaning technologies, please identify:

- Contaminants the device can remove
- Overall system capacity
- Cleaning effectiveness for each contaminant

Again, this information must be submitted by September 17, 2012.

Comments Invited

The FAA invites interested persons to submit written comments, data, or views. The most helpful comments reference a specific area of concern, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this notice. The FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the

FOR FURTHER INFORMATION CONTACT section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD–ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

Issued in Washington, DC, on July 6, 2012.

Wendell L. Griffin,

Deputy Director, Office of Accident Investigation and Prevention.

[FR Doc. 2012–17368 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0032; Directorate Identifier 2010–NM–236–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. That NPRM proposed to require inspecting the orientation of both sides of the coil cord connector keyways of the number 2 windows on the flight deck; re-clocking the connector keyways to 12 o'clock, if necessary; and replacing the coil cord assemblies on both number 2 windows on the flight deck. That NPRM was prompted by reports of arcing and smoke at the left number 2 window in the flight deck. This action revises that NPRM by changing the keyway position of certain receptacle connectors and adding airplanes to the applicability. We are proposing this supplemental NPRM (SNPRM) to prevent arcing, smoke, and fire in the flight deck, which could lead to injuries to or incapacitation of the flightcrew. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by August 31, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *Elias.Natsiopoulos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0032; Directorate Identifier 2010–NM–236–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, as identified in Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010. That NPRM published in the **Federal Register** on January 26, 2011 (76 FR 4567). That NPRM proposed to require inspecting the orientation of both sides of the coil cord connector keyways of the number 2 windows on the flight deck; re-clocking the connector keyways to 12 o'clock, if necessary; and replacing the coil cord assemblies on both number 2 windows on the flight deck.

Actions Since Previous NPRM (76 FR 4567, January 26, 2011) Was Issued

Since we issued the previous NPRM (76 FR 4567, January 26, 2011), we have received three reports by operators of wire connectors at the two ends of the coil cord rubbing each other. These operators had accomplished the actions described in Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010 (or earlier revisions), which was referred to in the previous NPRM as the appropriate source of service information. The rub condition occurs when the window opens or is in the fully open position. The rub condition can possibly cause damage to the wire connector and the coil cord and cause arcing, smoke, and fire in the flight deck, which could lead to injuries to or incapacitation of the flightcrew. As a result of these findings, Boeing has issued Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011, to correct the rubbing condition. The SNPRM will specify Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011 as the appropriate source of service information for accomplishing the proposed actions.

This SNPRM also adds airplanes to the applicability, which includes Model 737–900ER airplanes and airplanes that have accomplished the actions of Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010, in production.

Comments

We gave the public the opportunity to comment on the previous NPRM (76 FR 4567, January 26, 2011). The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for Previous NPRM (76 FR 4567, January 26, 2011)

American Airlines (American) and Delta Airlines (Delta) stated they have no objections to the previous NPRM (76 FR 4567, January 26, 2011).

Request To Use Revised Clocking Positions

Boeing requested that clocking of the connectors for the left window be changed to the 9 o'clock position, and the 3 o'clock position for the right window. Boeing stated that this will provide better separation between the two ends of the coiled cord when the windows are in the open position. Boeing stated that Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010, will be revised to reflect this change.

We agree. The proposed change prevents coil cord damage resulting from the close proximity of the two ends of the cord when the windows are in the open position. Without this change, the unsafe condition that originally prompted the previous NPRM (76 FR 4567, January 26, 2011) would not be corrected. We have changed the SNPRM to reference the actions specified in Boeing Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011.

Request To Revise Certain Service Information

American stated that Paragraph 1.K.1. of Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010, states that the only affected publication is the Boeing Model 737 illustrated parts catalog (IPC). But American pointed out that the wiring diagram manual (WDM) also needs to be revised, because Figures 2 and 7 of Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010, show the new wiring diagram after the installation of the new coil cord assembly.

We agree that the WDM is affected by wiring changes shown in Figures 2 and 7 of Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010. As previously described, we have updated this supplemental NPRM to refer to Boeing Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011. Paragraph 1.K.1. of that service bulletin does include the WDM as an affected reference.

Request To Revise Service Information Reference

American stated that, in Figures 4 and 9 of Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010, Section 20–10–11 of the standard wiring practices manual (SWPM) is referenced as an accepted procedure for adjusting the connector keyway if it needs to be re-clocked. American pointed out that this SWPM section does mention connectors, but does not reference clocking of keyways. Therefore, the more appropriate reference would be Section 20–60–06 of the SWPM, which covers the installation of electrical connectors.

We agree that Section 20–10–11 of the SWPM does not provide instructions for setting the keyway or re-clocking the connectors. Those instructions are included in Section 20–60–06 of the SWPM. However, re-clocking or resetting the connector keyway is a misnomer of the intended action. According to Boeing, the intended action in Figures 4 and 9 of Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010, is the repositioning of the connector, not re-clocking or resetting the connector keyway. Boeing Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011, deletes the wording "re-clocking or resetting the connector keyway," and replaces it with text more clearly describing the intended action. As explained previously, we have changed the SNPRM to reference Boeing Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011.

FAA's Determination

We are proposing this SNPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the previous NPRM (76 FR 4567, January 26, 2011). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Costs of Compliance

We estimate that this proposed AD will affect 712 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of airplanes	Cost on U.S. operators
Keyway inspection and installation of new cord assemblies on both sides of the flight deck (Group 1, Configuration 1 airplanes).	6 work-hours × $85 per hour = $510.	$1,608	$2,118	712	$1,508,016
Adjustment of receptacles on both sides of the flight deck (Group 1, Configuration 1, and Group 2 airplanes).	4 work-hours × $85 per hour = $340.	0	340	404	137,360

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2011–0032; Directorate Identifier 2010–NM–236–AD.

(a) Comments Due Date

We must receive comments by August 31, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

(e) Unsafe Condition

This AD was prompted by reports of arcing and smoke at the left number 2 window in the flight deck. We are issuing this AD to prevent arcing, smoke, and fire in the flight deck, which could lead to injuries to or incapacitation of the flightcrew.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Replacement for Group 1, Configuration 1 Airplanes

For Group 1, Configuration 1 airplanes, as identified in Boeing Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011: Within 48 months after the effective date of this AD, do the actions in paragraphs (g)(1) and (g)(2) of this AD.

(1) Do a general visual inspection of the orientation of the coil cord connector keyways on the captain's and first officer's sides of the flight compartment, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011. If the orientation is not at the specified position, before further flight, turn the receptacle connector to the correct position, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011.

(2) Replace the coil cords with new coil cords on both sides of the flight deck, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011.

(h) Inspection and Replacement for Group 1, Configuration 2, and Group 2 Airplanes

For Group 1, Configuration 2, and Group 2 airplanes, as identified in Boeing Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011: Within 48 months after the effective date of this AD, install the receptacle connector with changed keyway position on both sides of the flight deck, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011.

(i) Credit for Previous Actions

This paragraph provides credit for the replacement required by paragraph (g)(2) of this AD, if the replacement was performed before the effective date of this AD using the service information specified in paragraph (i)(1), (i)(2), (i)(3), or (i)(4) of this AD, provided that the actions required by paragraph (h) of this AD are done in accordance with Boeing Special Attention Service Bulletin 737–30–1058, Revision 4, dated November 3, 2011, for Group 1, Configuration 2, and Group 2 airplanes.

(1) Boeing Service Bulletin 737–30–1058, dated July 27, 2006, which is not incorporated by reference.

(2) Boeing Service Bulletin 737–30–1058, Revision 1, dated June 18, 2007, which is not incorporated by reference.

(3) Boeing Service Bulletin 737–30–1058, Revision 2, dated February 13, 2009, which is not incorporated by reference.

(4) Boeing Special Attention Service Bulletin 737–30–1058, Revision 3, dated July 7, 2010, which is not incorporated by reference.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

(1) For more information about this AD, contact Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *Elias.Natsiopoulos@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton,

WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 6, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–17391 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0619; Directorate Identifier 2007–NM–356–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. That NPRM proposed to require performing repetitive operational tests of the engine fuel suction feed of the fuel system, and other related testing if necessary. That NPRM was prompted by reports of two in-service occurrences on Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. This action revises that NPRM by proposing to require repetitive operational tests, and corrective actions if necessary. We are proposing this supplemental NPRM to detect and correct loss of the engine fuel suction feed capability of the fuel system, which in the event of total loss of the fuel boost pumps could result in dual engine flameout, inability to restart the engines, and consequent forced landing of the airplane. Since these actions impose an additional burden over that proposed in the previous NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by August 31, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0619; Directorate Identifier 2007–NM–356–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. That NPRM published in the **Federal Register** on June 6, 2008 (73 FR 32245). That NPRM proposed to require performing repetitive operational tests of the engine fuel suction feed of the fuel system, and other related testing if necessary.

Actions Since Previous NPRM (73 FR 32245, June 6, 2008) Was Issued

Since we issued the previous NPRM (73 FR 32245, June 6, 2008), we have received comments from operators indicating a high level of difficulty performing the actions in the previous NPRM during maintenance operations.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–28A2331, dated April 2, 2012. This service information describes procedures for repetitive operational tests of the engine fuel suction feed of the fuel system, and corrective actions if necessary. The corrective actions include isolating the cause of any leakage and repairing the leak.

Comments

We gave the public the opportunity to comment on the previous NPRM (73 FR 32245, June 6, 2008). The following presents the comments received on the previous NPRM and the FAA's response to each comment.

Requests To Clarify the Reason for the Unsafe Condition/Define Risk Assessment

Boeing and Northwest Airlines (NWA) asked that we clarify the reason for the unsafe condition identified in the previous NPRM (73 FR 32245, June 6, 2008) by including all relevant information.

Boeing stated that the description of a report of in-service occurrences of loss of fuel system suction feed capability results from reports of two in-service engine flameout events while operating on suction feed with undetected air leak failures on Model 737–400 airplanes. Boeing added that there are no known reports of any engine flameout-related events in the Model 747 fleet. Boeing noted that undetected air leaks could exist and the subject maintenance procedure is a proactive measure to ensure engine flameout will not occur due to air leaks while on suction feed operation.

NWA asked for an explanation of what caused the failure that resulted in issuance of the previous NPRM (73 FR 32245, June 6, 2008), and stated that failure analysis could indicate different action than the one proposed. NWA added that the events occurred on twin-engine airplanes, and requested that we provide the basis for the conclusion that Model 747–400 airplanes have the same or greater risk for this unsafe condition to occur as twin-engine airplanes.

We agree that the reason for the unsafe condition should be clarified for the reasons provided. We have changed the language in the reason for the unsafe condition identified in the Summary section and paragraph (e) of this supplemental NPRM to specify that the previous NPRM (73 FR 32245, June 6, 2008) was prompted by reports of two in-service occurrences on Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine.

The cause of the failure is identified in a failure analysis done by Boeing, and incorporates a four-engine airplane in place of a twin-engine airplane. The differences between the four-engine airplane and the twin-engine airplane are reflected in a longer compliance time for the four-engine airplane. Although the Model 747 fuel system differs with respect to the engine fuel feed design, service data of transport category airplanes indicate that multi-engine flameouts have generally resulted from a common cause such as fuel mismanagement, crew action that inadvertently shuts off the fuel supply to the engines, exposure to common environmental conditions, or engine deterioration occurring on all engines of the same type. Successful in-flight restart of these engines depends on adequate fuel being supplied to the engines solely through engine fuel suction feed. Deterioration of the fuel plumbing system ''lead-to-line'' (vacuum) reduces engine fuel suction feed capability; therefore, directed maintenance is necessary to ensure that this system is available to perform its function in order to maintain continued safe flight.

In light of the above, we have determined that Model 747–400, –400D, and –400F series airplanes are also affected by the identified unsafe condition, and are considering additional rulemaking for those airplanes.

Request To Issue Certification Maintenance Requirement (CMR) Task Instead of Previous NPRM (73 FR 32245, June 6, 2008)

Japan Airlines (JAL) requested that we withdraw the previous NPRM (73 FR 32245, June 6, 2008). JAL asked that instead of issuing an NPRM, we issue a CMR task. JAL stated that the requirements in the previous NPRM should not be addressed as an AD. JAL did not provide a reason for this request.

We do not agree with the commenter's request. CMRs are developed by the Certification Maintenance Coordination Committee (CMCC) during the type certification process. The CMCC is made up of manufacturer representatives (typically maintenance, design, and safety engineering personnel); operator representatives designated by the Industry Steering Committee chairperson; aircraft certification office specialists, and the maintenance review board (MRB) chairperson. CMRs developed during this process become a part of the certification basis of the airplane upon issuance of the type certificate. We do not have a process for convening the CMCC outside of the type certification process; based on this, the CMR is not an option for replacing this AD. Regardless, the airworthiness limitations (ALI) were not in the maintenance program at the time the previous NPRM (73 FR 32245, June 6, 2008) was issued; therefore, an AD is required to accomplish the ALI task.

Request To Remove or Clarify Certain Language in Paragraph (f) of the Previous NPRM (73 FR 32245, June 6, 2008)

NWA asked that the last sentence in paragraph (f) of the previous NPRM (73 FR 32245, June 6, 2008) be removed or clarified. NWA stated that the intent of that sentence is unclear, and is reiterated as follows: ''Thereafter, except as provided in paragraph (h) of this AD, no alternative procedure or repetitive test intervals will be allowed.'' NWA added that it is standard practice that once an AD is issued, deviation procedures and intervals are not allowed unless approved by requesting an alternative method of compliance.

We agree with the commenter that including the subject sentence is redundant; however, that sentence is included in paragraph (g) of the supplemental NPRM (paragraph (f) of the previous NPRM (73 FR 32245, June 6, 2008)) merely as a reminder for operators of standard practices. We have made no change to the supplemental NPRM in this regard.

Request To Revise Costs of Compliance Section

NWA stated that the cost estimate specified in the previous NPRM (73 FR 32245, June 6, 2008) is too low, and asked that it be changed. NWA stated that the cost of fuel is not included in the cost estimate and should be included due to the high cost of fuel.

We acknowledge the commenter's request. Although fuel is used during the operational test, we have not received data on the amount of fuel used during the test. In addition, fuel costs vary among operators. Therefore, we do not have definitive data that would enable us to provide a cost estimate for the fuel costs. In any case, we have determined that direct and incidental costs are still outweighed by the safety benefits of the AD. We have made no change to the supplemental NPRM in this regard.

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the original NPRM (73 FR 32245, June 6, 2008). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM revises the previous NPRM (73 FR 32245, June 6, 2008) by proposing repetitive operational tests of the engine fuel suction feed of the fuel system, and corrective actions if necessary.

Costs of Compliance

We estimate that this proposed AD would affect 1,080 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
Operational Test	3 work hours × $85 per hour = $255 per engine, per test.	$255	$275,400 per engine, per test.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions or the optional terminating action specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2008–0619; Directorate Identifier 2007–NM–356–AD.

(a) Comments Due Date

We must receive comments by August 31, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2800, Aircraft Fuel System.

(e) Unsafe Condition

This AD was prompted by reports of two in-service occurrences on Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. We are issuing this AD to detect and correct loss of the engine fuel suction feed capability of the fuel system, which in the event of total loss of the fuel boost pumps could result in dual engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Operational Test and Corrective Actions

Within 30,000 flight hours after the effective date of this AD: Perform an operational test of the engine fuel suction feed of the fuel system, and all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–28A2331, dated April 2, 2012. Do all applicable corrective actions before further flight. Repeat the operational test thereafter at intervals not to exceed 30,000 flight hours. Thereafter, except as provided in paragraph (h) of this AD, no alternative procedure or repetitive test intervals will be allowed.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9–ANM–Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Related Information

(1) For more information about this AD, contact Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 5, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–17393 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0720; Directorate Identifier 2012–NM–059–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Cessna Aircraft Company Model 750 airplanes. This proposed AD was prompted by reports of loss of displayed airspeed. This proposed AD would require inspecting certain logic modules to determine if certain cabin altitude/pitot static heater module assemblies are installed and replacing those assemblies with a new assembly; and revising the Non-Normal Procedures Section of the airplane flight manual (AFM) to include procedures for resetting the pitot switch in the event of pitot heater failure and for total loss of airspeed indication. We are proposing this AD to prevent the loss of all displayed airspeed, which could result in reduced ability to control the airplane.

DATES: We must receive comments on this proposed AD by August 31, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277; telephone 316–517–6215; fax 316–517–5802; email *citationpubs@cessna.textron.com;* Internet *https://www.cessnasupport.com/newlogin.html.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christine Abraham, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; phone: 316–946–4165; fax: 316–946–4107; email: *Christine.Abraham@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0720; Directorate Identifier 2012–NM–059–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received multiple reports of loss of displayed airspeed. An investigation has revealed that a sudden temperature change to the pitot probe can cause a spike in the current supplied by the cabin altitude logic module. The over-current module senses the spike and shuts the current off resulting in loss of heat to the pitot probe(s). In the absence of pitot heat, ice can build up on the pitot probes resulting in no airspeed information being sent to the air data system and consequent loss of displayed airspeed. The loss of all displayed airspeed could result in reduced ability to control the airplane.

Relevant Service Information

We reviewed Cessna Service Letter SL750–30–08, Revision 1, dated July 11, 2011. This service information describes procedures for inspecting certain logic modules to determine if certain cabin altitude/pitot static heater module assemblies are installed and replacing those assemblies with a new assembly.

We have also reviewed the following temporary changes to the Cessna 750 AFM for resetting the pitot switch in the event of pitot heat failure and for total loss of airspeed indication.

- Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–25, approved June 26, 2012.
- Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–26, approved June 26, 2012.
- Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–23, approved June 26, 2012.
- Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–24, approved June 26, 2012.
- Cessna Temporary FAA Approved Airplane Flight Manual Change 75FMA TC–R02–03, approved April 10, 2012.
- Cessna Temporary FAA Approved Airplane Flight Manual Change 75FMA TC–R02–07, approved June 26, 2012.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.'' Additionally, this proposed AD would require revising the Non-Normal Procedures Section of the Cessna 750 AFM to include procedures for resetting the pitot switch in the event of pitot heater failure and for total loss of airspeed indication.

Differences Between the Proposed AD and the Service Information

Although Cessna Service Letter SL750–30–08, Revision 1, dated July 11, 2011, recommends accomplishing the inspection within 1,200 flight hours or two years after the date of receipt of that service letter, we have determined that interval would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this proposed AD, we considered the degree of urgency associated with the subject unsafe condition and we find that a compliance time of within 600 flight hours or within one year after the effective date of this proposed AD, whichever occurs first, represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Cessna.

Costs of Compliance

We estimate that this proposed AD affects 210 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × $85 per hour = $170	$0	$170	$35,700
Revision	1 work-hour × $85 per hour = $85	0	85	17,850

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	1 work-hour × $85 per hour = $85	$4,058	$4,143

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Cessna Aircraft Company: Docket No. FAA–2012–0720; Directorate Identifier 2012–NM–059–AD.

(a) Comments Due Date

We must receive comments by August 31, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Cessna Aircraft Company Model 750 airplanes, certificated in any category, serial numbers 0001 through 0245 inclusive.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 3030, Pitot/Static Anti-Ice System.

(e) Unsafe Condition

This AD was prompted by reports of loss of displayed airspeed. We are issuing this AD to prevent the loss of all displayed airspeed, which could result in reduced ability to control the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Replacement

Within 600 flight hours or one year after the effective date of this AD, whichever occurs first: Do an inspection of logic modules having part number (P/N) NC006 and P/N NC007 to determine if any cabin altitude/pitot static heater module assemblies having P/N 6718477–9, or P/N 6718477–10, or 9914731–1 are installed, in accordance with the Accomplishment Instructions of Cessna Service Letter SL750–30–08, Revision 1, dated July 11, 2011. If any altitude/pitot static heater module assembly having P/N 6718477–9, P/N 6718477–10, or 9914731–1 is installed: Before further flight, replace that assembly with a new assembly having P/N 6718477–11, in accordance with the Accomplishment Instructions of Cessna Service Letter SL750–30–08, Revision 1, dated July 11, 2011.

(h) Airplane Flight Manual (AFM) Revision

Concurrently with the actions required by paragraph (g) of this AD: Revise the Non-Normal Procedures Section of the Cessna 750 AFM to include the information the flight manual changes identified in paragraphs (h)(1), (h)(2), (h)(3), (h)(4), (h)(5), and (h)(6) of this AD. This may be done by inserting copies of these flight manual changes into the Cessna 750 AFM. When these flight manual changes have been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in these flight manual changes, and then these temporary flight manual changes may be removed.

(1) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–25, approved June 26, 2012.

(2) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–26, approved June 26, 2012.

(3) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–23, approved June 26, 2012.

(4) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–24, approved June 26, 2012.

(5) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FMA TC–R02–03, approved April 10, 2012.

(6) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FMA TC–R02–07, approved June 26, 2012.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install an altitude/pitot static heater module assembly having P/N 6718477–9, 6718477–10, or 9914731–1, on any airplane.

(j) Special Flight Permit

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided the actions required by paragraph (h) of this AD have been accomplished.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

(1) For more information about this AD, contact Christine Abraham, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; phone: 316–946–4165; fax: 316–946–4107; email: *Christine.Abraham@faa.gov.*

(2) For service information identified in this AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277; telephone 316–517–6215; fax 316–517–5802; email *citationpubs@cessna.textron.com;* Internet *https://www.cessnasupport.com/newlogin.html.* You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 6, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–17395 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2012–0379; Airspace Docket No. 12–ANM–7

Proposed Establishment of Class E Airspace; Deer Lodge, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Deer Lodge-City-County Airport, Deer Lodge, MT. Controlled airspace is necessary to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Deer Lodge-City-County Airport, Deer Lodge, MT. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before August 31, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0379; Airspace Docket No. 12–ANM–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0379 and Airspace Docket No. 12–ANM–7) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0379 and Airspace Docket No. 12–ANM–7''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace at Deer Lodge-City-County Airport, Deer Lodge, MT, to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at the airport. This action would enhance the safety and management of instrument flight rules operations at Deer Lodge-City-County Airport, Deer Lodge, MT.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Deer Lodge-City-County Airport, Deer Lodge, MT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM MT E5 Deer Lodge, MT [New]

Deer Lodge-City-County Airport, MT
(Lat. 46°23′16″ N., long. 112°45′54″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Deer Lodge-City-County Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 46°41′00″ N., long. 114°08′00″ W.; to lat. 47°03′00″ N., long. 113°33′00″ W.; to lat. 46°28′00″ N., long. 112°15′00″ W.; to lat. 45°41′00″ N., long. 112°13′00″ W.; to lat. 45°44′00″ N., long. 113°03′00″ W.; thence to the point of origin.

Issued in Seattle, Washington, on July 10, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AD47

Clearing Exemption for Certain Swaps Entered Into by Cooperatives

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is proposing a rule pursuant to its authority under Section 4(c) of the Commodity Exchange Act (CEA) allowing cooperatives meeting certain conditions to elect not to submit for clearing certain swaps that such cooperatives would otherwise be required to clear in accordance with Section 2(h)(1) of the CEA.

DATES: Comments must be received on or before August 16, 2012.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD47, by any of the following methods:

Commission Web Site: http://comments.cftc.gov. Follow the instructions for submitting comments through the Web site.

Mail: David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

Hand Delivery/Courier: Same as mail above.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. ''Exempt Cooperatives'' must be clearly indicated on all comment submissions. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of a submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Erik F. Remmler, Associate Director, 202–418–7630, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

I. Background

The CEA, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''),[2] establishes a comprehensive new regulatory framework for swaps. The CEA requires a swap: (1) To be submitted for clearing through a derivatives clearing organization (DCO) if the Commission has determined that the swap is required to be cleared, unless an exception to the clearing requirement applies; (2) to be reported to a swap data repository (SDR) or the Commission; and (3) if such swap is subject to a clearing requirement, to be executed on a designated contract market (DCM) or swap execution facility (SEF), unless no DCM or SEF has made the swap available to trade.

Section 2(h)(1)(A) of the CEA establishes a clearing requirement for swaps, providing that ''it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a [DCO] that is registered under [the CEA] or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared.''[3] However, Section 2(h)(7)(A) of the CEA provides that the clearing requirement of Section 2(h)(1)(A) shall not apply to a swap if one of the counterparties to the swap: ''(i) is not a financial entity; (ii) is using swaps to hedge or mitigate commercial risk; and (iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps'' (referred to hereinafter as the ''end-user exception'').[4] The Commission has promulgated § 39.6 to implement certain provisions of Section 2(h)(7). Accordingly, any swap that is required to be cleared by the Commission pursuant to Section 2(h)(2) of the CEA must be submitted to a DCO for clearing by the counterparties unless the conditions of § 39.6 are satisfied.

Congress adopted the end-user exception in Section 2(h)(7) of the CEA to permit certain non-financial companies to continue using non-cleared swaps to hedge risks associated with their underlying businesses, such as manufacturing, energy exploration, farming, transportation, or other commercial activities. Additionally, in Section 2(h)(7)(C)(ii) of the CEA, the Commission was directed to ''consider whether to exempt from the definition of 'financial entity' small banks, savings associations, farm credit system institutions and credit unions including:

(I) Depository institutions with total assets of $10,000,000,000 or less;

(II) Farm credit system institutions with total assets of $10,000,000,000 or less; or

(III) Credit unions with total assets of $10,000,000,000 or less.''

In § 39.6(d), the Commission identifies which financial entities are small financial institutions and establishes an exemption for these small financial institutions pursuant to Section 2(h)(7)(C)(ii) (the ''small financial institution exemption''). The small financial institution exemption largely adopts the language of Section 2(h)(7)(C)(ii) providing for an exemption for the types of Section 2(h)(7)(C)(ii) institutions having total assets of $10 billion or less.

On December 23, 2010, the Commission published for public comment a notice of proposed rulemaking (NPRM) for § 39.6.[5] Several parties that commented on the § 39.6 NPRM recommended that the Commission provide relief from clearing for cooperatives.[6] These commenters primarily reasoned [7] that the member ownership nature of cooperatives and the fact that cooperatives act on behalf of members that are non-financial entities or small financial institutions justified an extension of the end-user exception to the cooperatives. In effect, they proposed that because a cooperative acts in place of its members when facing the larger financial markets on behalf of the members, the end-user exception that would be available to a cooperative's members should pass through to the cooperative. Accordingly, if the members themselves could elect the end-user exception, then the Commission should permit the cooperatives to do so as well.

However, Section 2(h)(7) of the CEA does not differentiate cooperatives from other types of entities and therefore, cooperatives that are ''financial entities,'' as defined in Section 2(h)(7)(i) of the CEA, would be prohibited from electing the end-user exception unless they qualify for the small financial institution exemption. Some commenters recommended including cooperatives that are ''financial entities'' with total assets in excess of $10 billion in the small financial institution exemption.[8] However, as explained in greater detail in the final release for § 39.6, Section 2(h)(7)(C)(ii) of the CEA focused on asset size and not on the structure of the financial entity. Accordingly, only cooperatives that are financial entities with total assets of $10 billion or less can qualify as small financial institutions.

Notwithstanding the foregoing, the Commission recognizes that the member ownership structure of cooperatives and the merits of effectively passing through the end-user exception available to members to the cooperative warrant consideration. Accordingly, the Commission is using the authority provided in Section 4(c) of the CEA to propose § 39.6(f), which would permit cooperatives that meet certain qualifications to elect not to clear certain swaps that are otherwise

[1] 17 CFR 145.9. Commission regulations may be accessed through the Commission's Web site, *http://www.cftc.gov.*

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010), available at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[3] *See* Section 2(h)(1)(A) of the CEA, 7 U.S.C. 2(h)(1)(A).

[4] *See* Section 2(h)(7)(A) of the CEA, 7 U.S.C. 2(h)(7)(A).

[5] *See* 75 FR 80747 (Dec. 23, 2010).

[6] *See, e.g.,* Agricultural Leaders of Michigan (ALM), The Farm Credit Council (FCC), Allegheny Electric Cooperative, Inc. (AEC), Garkane Energy Cooperative, Inc. (GEC), National Council of Farmer Cooperatives, Dairy Farmers of America, and National Rural Utilities Cooperative Finance Corporation (CFC). All comments referred to in this NPRM were comments received on the § 39.6 NPRM and can be found on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=937.*

[7] Other reasons given for providing an exemption from clearing for cooperatives, including risk considerations, are discussed below.

[8] *See, e.g.,* FCC, CFC, AEC, ALM, and GEC.

required to be cleared pursuant to Section 2(h)(1)(A) of the CEA (hereinafter referred to as the ''cooperative exemption'').

II. Cooperatives

Cooperatives that are ''financial entities'' as defined in Section 2(h)(7)(C)(i) of the CEA generally serve as the collective asset liability manager for their members. In this role, the cooperatives face the financial markets on behalf of their members. For example, they borrow money on a wholesale basis and then lend those funds to their members to meet their funding needs at a lower cost than would otherwise be available to the members individually. The commenters on the § 39.6 NPRM noted that financial cooperatives also enter into swaps with members primarily in connection with originating loans to the members for the purpose of hedging interest rate risk associated with the loans.[9] The cooperatives also enter into swaps with other financial entities, typically Swap Dealers (''SDs'') or Major Swap Participants (''MSPs''), to hedge the risks associated with the swaps they execute with their members or to hedge risks associated with their wholesale borrowing activities. The cooperatives use their size and resources on behalf of their members to provide more efficient financing and hedging than the members might achieve on their own.

Several commenters also noted that financial cooperative swap activities in connection with loans to members pose less risk to the financial system.[10] The cooperatives often enter into swaps with other financial institutions, typically on a matched book basis, to hedge the underlying risk of those member swaps. According to commenters, such matched book swaps pose less risk to the cooperatives because the market risk is largely passed through. Similar comments were made with respect to small financial institutions and the Commission acknowledged this as one reason for adopting the small financial institution exemption.

Some cooperatives have more than $10 billion in total assets, but act on behalf of members that are non-financial entities, small financial institutions, or other cooperatives whose members consist of such entities.[11] For example, there are four Farm Credit System (FCS) banks chartered under Federal law, each of which has assets in excess of $10 billion. The FCS banks are cooperatives primarily owned by their cooperative associations.[12] The Farm Credit Act authorizes the banks ''to make loans and commitments to eligible cooperative associations.''[13] The FCS association members are, in turn, authorized to make loans to farmers and ranchers, rural residents, and persons furnishing farm-related services.[14] In effect, FCS bank cooperatives lend to FCS associations, which lend to farmers, and farmers own the FCS associations, which own the FCS banks. In addition to the example of the FCS banks as provided in Federal law, other cooperatives formed under Federal and state laws also have a similar entity structure in that they are owned by their members and they exist primarily to serve those members.

III. The Proposed Cooperative Exemption Rule

A. Introduction

In proposing an exemption for certain swaps entered into by cooperatives that are financial entities, the Commission is very much aware that central clearing of swaps is a primary focus of Title VII of the Dodd-Frank Act. Central clearing mitigates financial system risks that result from swaps and any exemption therefrom should be narrowly drawn to minimize the impact on the risk mitigation benefits of clearing and should also be in line with the end-user exception requirements of Section 2(h)(7) of the CEA. Accordingly, the Commission has sought to narrow the cooperative exemption appropriately.

B. Regulation 39.6(f)(1). Definition of Exempt Cooperative

The proposed rule would apply only to cooperatives that are financial entities as defined in Section 2(h)(7)(C)(i) of the CEA. The end-user exception is generally available to commercial (i.e. non-financial) cooperatives, or financial cooperatives that meet the requirements of the small financial institution exemption, that are seeking an exception for swaps that hedge or mitigate commercial risk.

Proposed paragraph (f)(1) would provide that each member of the cooperative seeking to elect the cooperative exemption must be a non-financial entity, a financial institution to which the small financial institution exemption applies, or itself a cooperative each of whose members fall into those categories. This provision would limit the cooperative exemption to cooperatives whose members are entities that could elect the end-user exception themselves. With this provision, the Commission is assuring that the cooperative exemption does not become overly broad and available to cooperatives with members that are non-exempt financial entities as defined in Section 2(h)(7)(C) of the CEA.[15]

C. Regulation 39.6(f)(2). Swaps to Which the Cooperative Exemption Applies

Proposed paragraph (f)(2)(i) limits application of the cooperative exemption to swaps entered into with members of the exempt cooperative in connection with originating loans[16] for members or swaps entered into by exempt cooperatives that hedge or mitigate risks associated with member loans or member loan-related swaps. This provision assures that the cooperative exemption is only used as a pass through for swaps with members who would themselves be able to elect the end-user exception and for swaps that hedge or mitigate risk in connection with member loans and swaps as would be required by Section 2(h)(7)(A)(ii) of the CEA for those member swaps. The primary rationale for the cooperative exemption is based on the unique relationship between cooperatives and their member owners. Expanding this exemption to include swaps with non-member entities with which a cooperative may do business (other than swaps used to hedge risks related to member loans or swaps) would go beyond the purpose of the exemption, which is to pass the member's end-user exception through to the cooperative because of the unique member-owner structure of cooperatives. Furthermore, allowing cooperatives to enter into non-cleared swaps with non-members or swaps that serve purposes other than hedging member loans or swaps would give the cooperatives, which are large financial entities, a market advantage over their competitors that is not justified by their cooperative structure or the provisions of the Dodd-Frank Act.

Additionally, for the cooperative exemption to benefit all members of cooperatives who would otherwise be able to elect the end-user exception themselves, the proposed exemption would be available to all qualifying

[9] *See, e.g.,* FCC, CFC, AEC, ALM, and GEC.

[10] *See, e.g.,* FCC, CFC, AEC, ALM, and GEC.

[11] *See, e.g.,* FCC, CFC, AEC, ALM, and GEC.

[12] *See* 12 U.S.C. 2124(c) (providing that ''[v]oting stock may be issued or transferred and held only by * * * cooperative associations eligible to borrow from the banks'').

[13] *Id.* § 2128(a).

[14] *See id.* § 2075.

[15] For example, the cooperative exemption would not be available to the Federal Home Loan Banks, whose membership includes financial entities that are not small financial institutions.

[16] The meaning of ''in connection with originating a loan'' is similarly used in the definition of swap dealer in § 1.3(ggg) of the CEA. *See* 77 FR 30596, 30744 (May 23, 2012). For purposes of consistency, that meaning is incorporated in the cooperative exception rule.

cooperatives, including those with total assets greater than $10 billion.[17] The Commission remains mindful that larger financial institutions pose greater risk to the financial system than small financial institutions, such as those identified in Section 2(h)(7)(C)(ii) of the CEA, because larger financial institutions are more likely to be interconnected with a greater number of market participants and therefore more likely to transfer risk widely. In keeping with this concern and in recognition of the larger asset size of cooperatives that will be able to use the cooperative exemption, the Commission, in its proposal, is limiting the cooperative exemption to swaps in connection with member loans. Several commenters who requested an exemption for cooperatives justified the request in part on the basis that cooperatives principally use swaps in connection with originating loans to members. These commenters noted that such swaps are relatively low risk. To minimize the risk a cooperative exemption might pose to the financial system, the proposed rule would limit the exemption to swaps in connection with originating loans to members and swaps used by the cooperatives to hedge or mitigate risks related to member loans or risks arising from swaps entered into with members related to such loans.

D. Regulation 39.6(f)(3). Reporting

Under Section 4(c) of the CEA, the Commission can subject such exemptive relief to appropriate terms and conditions.[18] To this end, the Commission believes it is appropriate to impose certain reporting requirements on any entities that may be exempted from the clearing requirement by this rule. These reporting requirements are effectively identical to the reporting requirements for the end-user exception. For the end-user exception, Section 2(h)(7)(A)(iii) of the CEA requires that one of the counterparties to the swap must notify ''the Commission in a manner set forth by the Commission how it generally meets its financial obligations associated with entering into non-cleared swaps.'' Regulation 39.6(b) implements Section 2(h)(7)(A)(iii) by requiring one of the counterparties (the ''reporting counterparty'') to provide, or cause to be provided, to a registered SDR, or if no registered SDR is available, to the Commission, information about how the counterparty electing the exception generally expects to meet its financial obligations associated with non-cleared swaps. In addition, § 39.6(b) requires the reporting counterparty to provide certain information that the Commission will use to monitor compliance with, and prevent abuse of, the end-user exception. The reporting counterparty would be required to provide the information at the time the electing counterparty elects the end-user exception.

Proposed § 39.6(f)(3) would require the same reporting required for the end-user exception whenever the cooperative exemption is elected for the same reasons. For purposes of regulatory consistency, § 39.6(f)(3) incorporates the provisions of § 39.6(b) with only those changes needed to apply the provisions to the cooperative exemption.

IV. Section 4(c) of the Commodity Exchange Act

Section 4(c)(1) of the CEA provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission, by rule, regulation or order, after notice and opportunity for hearing, may exempt any agreement, contract, or transaction, or class thereof, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to the agreement, contract, or transaction, from the contract market designation requirement of Section 4(a) of the CEA, or any other provision of the CEA other than certain enumerated provisions.[19] Through this exemptive regulation, the Commission proposes that cooperatives meeting certain conditions are the class of persons that should be exempted from the clearing requirement for certain types of swaps. As discussed in more detail above, such cooperatives act on behalf of their members in certain financial matters and to that extent, the proposed rule effectively provides for passing through the end-user exception available to such cooperatives' members to the cooperatives.

The end-user exception provided in Section 2(h)(7) of the CEA is not available to an entity that is a ''financial entity'' as defined in Section 2(h)(7)(C)(i) unless such entity is exempt from the definition because it is a small financial institution as provided in Section 2(h)(7)(C)(ii) of the CEA and § 39.6(d). As explained in greater detail in the final release for § 39.6, Section 2(h)(7)(C)(ii) of the CEA focused exclusively on asset size for determining what financial entities could qualify for the small financial institution exemption. Furthermore, the $10 billion limit identified in that section guides the Commission's consideration of the small financial institution exemption absent convincing evidence that a different asset level is warranted. Section 2(h)(7)(C)(ii) does not provide special consideration for cooperatives that meet the definition of ''financial entity'' and therefore the asset size limit applies to them.

Cooperatives have a member ownership structure in which the cooperatives exist to serve their member owners and do not act for their own profit.[20] Furthermore, the member owners of the cooperative collectively have full control and governance of the cooperative. In a real sense, the cooperative is not separable from its member owners. As described above, some cooperatives provide financial services to their members including lending and providing swaps to members and hedging those activities with other financial entities such as SDs. The memberships of some of these cooperatives consist of entities that each could elect the end-user exception if acting alone. However, some of those cooperatives meet the definition of ''financial entity'' and have assets in excess of $10 billion, and therefore the end-user exception is unavailable to them. Accordingly, the cooperative members would not benefit from the end-user exception if they use their cooperative as the preferred vehicle for hedging commercial risks in the greater financial marketplace. In light of this, the Commission is exercising its authority under Section 4(c) of the CEA to propose § 39.6(f) and establish the cooperative exemption.

The Commission believes that there are benefits to having cooperatives execute risk hedging or mitigation strategies with, and on behalf of, their members. The FCC has commented that ''[t]o provide tailored financing products for farmers and farm-related businesses, Farm Credit System institutions rely on the safe use of derivatives to manage interest rate, liquidity, and balance sheet risk, primarily in the form of interest rate swaps.'' The FCS institutions include the four FCS cooperative banks, each of which has total assets in excess of $10 billion. Using the substantial, finance-focused resources of the cooperative to

[17] Some financial cooperatives such as CoBank, and AgriBank FCB, have total assets in excess of $50 billion.

[18] *See* Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1).

[19] 7 U.S.C. 6(c).

[20] For example, the CFC was formed as a nonprofit corporation under the District of Columbia Cooperative Association Act of 1940 to arrange financing for its members and their patrons and for the ''primary and mutual benefit of the patrons of the Association and their patrons, as ultimate consumers.'' CFC Articles of Incorporation, Art. 1.

undertake hedging activities for the numerous members of the cooperative promotes greater economic efficiency and lower costs for the members. The Commission believes that the use of swaps in this manner by cooperatives on behalf of their members constitutes financial innovation that is beneficial for the public.

In light of the foregoing, the Commission believes that the adoption of proposed § 39.6(f) and its attendant terms and conditions would promote responsible economic and financial innovation and fair competition.

The Commission requests public comment on whether the proposed regulation satisfies the requirements for exemption under Section 4(c) of the CEA and on all aspects of the proposed regulation. The Commission welcomes any quantifiable data and analysis that would assist the Commission in this rulemaking. In particular, the Commission is requesting comment on the following questions:

- Has the Commission correctly limited the exemption to cooperatives in which each member is: A non-financial entity, a financial entity to which the small financial institution exemption applies, or a cooperative each of whose members fall into those categories?
- Are there cooperatives in which not all members are a non-financial entity, a financial entity to which the small financial institution exemption applies, or a cooperative each of whose members fall into those categories? If so, should the proposed definition of ''exempt cooperative'' be modified to include them? Would such inclusion undermine the narrow pass through focus of the rule? Is it possible that financial entities that do not currently operate as cooperatives and for which the clearing requirement is intended could reorganize or create cooperatives to take advantage of the proposed cooperative exemption? If so, how could the proposed rule be modified to prevent that from happening? Should affiliates of financial entities identified in Sections 2(h)(7)(C)(i)(I) through (VII) of the CEA be expressly excluded from the definition of exempt cooperative?
- The Commission invites comment on whether the types of swaps for which the cooperative exemption may be elected should be expanded or further limited and why. If so, please describe such expansion or limitation specifically. Is the provision allowing for swaps that hedge or mitigate risk ''related to loans to members'' too limited or not limited enough? What clarifying language could be added to more effectively identify such swaps that would be consistent with the rationale used for the proposed rule regarding the cooperative standing in place of its members when entering into hedging swaps with other financial entities? Are there practical or other considerations in identifying which swaps serve to hedge or mitigate the risk of member loans or member loan related swaps?
- Are there additional or alternative considerations that should be reviewed by the Commission regarding the proposed cooperative exemption?

V. Consideration of Costs and Benefits

A. Background

In the wake of the financial crisis of 2008, Congress adopted the Dodd-Frank Act, which, among other things, requires the Commission to determine whether a particular swap, or group, category, type or class of swaps, shall be required to be cleared.[21] Specifically, Section 723(a)(3) of the Dodd-Frank Act amended Section 2(h)(1)(A) of the CEA to make it ''unlawful for any person to engage in a swap unless that person submits such swap for clearing to a [DCO] that is registered under the CEA or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared.'' This clearing requirement is designed to reduce counterparty risk associated with swaps and, in turn, mitigate the potential systemic impact of such risk and reduce the likelihood for swaps to cause or exacerbate instability in the financial system.[22] It reflects a fundamental premise of the Dodd-Frank Act: the use of properly regulated and functioning central clearing can reduce systemic risk.

Notwithstanding the benefits of clearing, Section 2(h)(7) of the CEA provides the end-user exception if one of the swap counterparties: ''(i) is not a financial entity; (ii) is using swaps to hedge or mitigate commercial risk; and (iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.'' Section 2(h)(7)(C)(ii) of the CEA directs the Commission to consider making the end-user exception available to small banks, savings associations, credit unions, and farm credit institutions, including those institutions with total assets of $10 billion or less, through an exemption from the definition of ''financial entity.''[23] In § 39.6(d), the Commission establishes the small financial institution exemption for these institutions. The small financial institution exemption largely adopts the language of Section 2(h)(7)(C)(ii) providing for an exemption for the institutions identified in Section 2(h)(7)(C)(ii) that have total assets of $10 billion or less.

Through proposed § 39.6(f), the Commission would use the authority provided in Section 4(c) of the CEA to permit ''exempt cooperatives,'' as defined in § 39.6(f)(1), to elect not to clear certain swaps that are otherwise required to be cleared pursuant to Section 2(h)(1)(A) of the CEA, notwithstanding that these cooperatives are financial entities that do not qualify for the small financial institution exemption because their assets exceed $10 billion. Specifically, an ''exempt cooperative'' is a cooperative under Federal or state law that is a financial entity each member of which is eligible for the end-user exception, or is another cooperative composed of members, each of whom is eligible for the end-user exception. An exempt cooperative would not be required to clear swaps with members in connection with member loans, or swaps used by the exempt cooperative to hedge or mitigate risk arising in connection with such swaps with members or loans to members.

On December 23, 2010, the Commission published for public comment an NPRM for § 39.6 proposing the end-user exception.[24] Several parties that commented on the § 39.6 NPRM recommended that the Commission provide relief from clearing for cooperatives. These commenters reasoned[25] that the member ownership nature of cooperatives and the fact that they act on behalf of members that are non-financial entities or small financial

[21] *See* Section 2(h)(2) of the CEA, 7 U.S.C. 2(h)(2).

[22] When a bilateral swap is moved into clearing, the DCO becomes the counterparty to each of the original participants in the swap. This standardizes counterparty risk for the original swap participants in that they each bear the same risk attributable to facing the DCO as counterparty. In addition, DCOs exist for the primary purpose of managing credit exposure from the swaps being cleared and therefore DCOs are effective at mitigating counterparty risk through the use of risk management frameworks. These frameworks model risk and collect defined levels of initial and variation margin from the counterparties that are adjusted for changing market conditions and use guarantee funds and other risk management tools for the purpose of assuring that, in the event of a member default, all other counterparties remain whole. DCOs have demonstrated resilience in the face of past market stress. Most recently, they remained financially sound and effectively settled positions in the midst of turbulent events in 2007–2008 that threatened the financial health and stability of many other types of entities.

[23] *See* CEA 2(h)(7)(C)(ii).

[24] *See* 75 FR 80747.

[25] Other reasons given for providing an exemption from clearing for cooperatives, including risk considerations, are discussed above in this NPRM.

institutions justified an extension of the end-user exception to the cooperatives. In effect, the commenters posit that because a cooperative takes the place of its members to face the larger financial markets on behalf of the members, the end-user exception that would be available to a cooperative's members should pass through to the cooperative. Accordingly, if the members themselves could elect the end-user exception, then the Commission should permit the cooperatives to do so as well.

The Commission is proposing such an exemption herein for certain cooperatives, and it is the costs and benefits of this exemption that the Commission considers in the discussion that follows.

B. Statutory Requirement To Consider the Costs and Benefits of the Commission's Action: CEA Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission considers the costs and benefits resulting from its own discretionary determinations with respect to the Section 15(a) factors.

The costs and benefits of the Commission's action in this rulemaking are measured against the level of costs and benefits that would exist absent this rulemaking. Absent this rulemaking, all cooperatives that are financial entities as defined in Section 2(h)(7)(C)(i) of the CEA and which are not otherwise exempt from that definition would be unable to elect the end-user exception pursuant to Section 2(h)(7)(A)(i) of the CEA, which specifies that to elect the end-user exception a counterparty must not be a financial entity. Thus, the foundation against which this rulemaking's costs and benefits are measured is the statutory requirement that cooperatives within the definition of financial entities and with assets exceeding $10 billion, remain subject to the clearing requirement of Section 2(h)(1)(A) of the CEA. Additionally, the Commission considers the rulemaking's costs and benefits relative to alternatives besides that of abstaining from action.

As discussed in more detail below, the Commission is able to estimate certain reporting costs. The dollar estimates are offered as ranges with upper and lower bounds, which is necessary to accommodate the uncertainty that surrounds them. The Commission notes that the most likely outcome with respect to each estimate is a cost above the lower bound and below the upper bound.

The discussion below considers the rule's costs and benefits as well as alternatives to the rule. The discussion concludes with a consideration of the rule's costs and benefits in light of the five factors specified in Section 15(a) of the CEA.

C. Costs and Benefits of the Proposed Rule

1. Costs and Benefits to Electing Entities

Without this proposed 4(c) rule, cooperatives meeting the criteria of the proposed exemption would have to engage in cleared swaps pursuant to Section 2(h)(1)(A) of the CEA when they are either: (1) Transacting with a member who does not elect the end-user exception, or (2) transacting with another financial entity to hedge or mitigate risk related to loans with members or swaps with members related to such loans. Extending the end-user exception to such entities in these circumstances benefits them in that they will not have to bear the costs of clearing that each may incur. These costs include certain capital costs and fees associated with clearing.[26]

Regarding fees, DCOs typically charge FCMs an initial transaction fee for each of the FCM customers' swaps that are cleared, as well as an annual maintenance fee for each of their customers' open positions. For example, not including customer-specific and volume discounts, the transaction fees for interest rate swaps at CME range from $1 to $24 per million notional amount and the maintenance fees are $2 per year per million notional amount for open positions.[27] LCH transaction fees for interest rate swaps range from $1 to $20 per million notional amount, and the maintenance fee ranges from $5 to $20 per swap per month, depending on the number of outstanding swap positions that an entity has with the DCO.[28]

It is within the FCM's discretion to determine whether or how to pass these fees on to their customers, but the Commission believes that FCMs generally pass these fees straight through to their customers. To the extent that this is true, allowing exempt cooperatives to elect not to clear swaps that meet the requirements of the proposed rule will result in the exempt cooperatives not having to pay such clearing related fees with respect to those swaps. The Commission requests comment on whether and how FCMs pass DCO fees on to their customers, and to what extent this creates clearing-related costs for exempt cooperatives entering into swaps meeting the conditions proposed in this rule. If possible, please provide quantitative information related to this issue.

The proposed rule may also impact the capital that cooperatives that are financial entities are required to hold with respect to their swap positions pursuant to prudential regulatory capital requirements. As stated above, when compared to a situation in which the proposed exemption is not available, the proposed exemption will reduce the number of swaps that eligible cooperatives are required to clear. The Commission anticipates that reducing the number of swaps that such cooperatives clear will impact their capital ratios in such a way as to reduce the amount of capital that eligible cooperatives are required to hold. This creates both benefits and costs. Regarding benefits, this increases the cooperative's lending capacity, enabling them to lend more to their members without retaining or raising additional capital. As for costs, this allows eligible cooperatives to become more highly leveraged, which increases the counterparty risk that they pose to their members and other market participants with whom they transact. The Commission invites comment on the effects of required clearing on the capital requirements for financial cooperatives. To the extent possible, please quantify the anticipated effect of the proposed exemption on relevant capital ratios as well as the costs and benefits resulting from changes in the cooperatives' leverage and lending capacity.

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[26] Transacting swaps bilaterally is not without cost, of course, and the Commission notes that uncleared swaps have associated costs as well. For example, when a market participant faces a swap dealer or other counterparty in an uncleared swap, the uncleared swap contains an implicit line of credit upon which the market participant effectively draws when its swap position is out of the money. Counterparties charge for this implicit line of credit in the spread they offer on uncollateralized, uncleared swaps.

[27] *See* CME pricing charts at: *http://www.cmegroup.com/trading/cds/files/CDS-Fees.pdf; http://www.cmegroup.com/trading/interest-rates/files/CME-IRS-Customer-Fee.pdf;* and *http://www.cmegroup.com/trading/interest-rates/files/CME-IRS-Self-Clearing-Fee.pdf.*

[28] *See* LCH pricing for clearing services related to OTC interest rate swaps at: *http://www.lchclearnet.com/swaps/swapclear_for_clearing_members/fees.asp.*

Clearing swaps creates an obligation for counterparties to the cleared swap to post both initial and variation margin related to that position. A clearing exemption may reduce the amount of capital that an entity has to post in order to cover its positions, particularly if that entity does not post margin directly to its counterparties with respect to some or all of its uncleared positions.[29] However, in the case of unmargined swaps, dealers typically account for the counterparty risk that they face in the absence of margin by adjusting the terms of the swap. The additional cost embedded in an unmargined swap to account for additional counterparty risk is likely to be roughly equivalent to the cost associated with a line of credit that would be used to post margin for that position if it were cleared.[30] The Commission, therefore, believes that this is an implicit cost in unmargined swaps that is made explicit by clearing swaps, rather than a new cost created by clearing. Therefore the exemption is not expected to significantly alter exempt cooperatives' costs in this area. The Commission invites comment regarding the expected effect of this proposed exemption on the amount and cost of collateral posted by entities eligible for the exemption. Wherever possible, please quantify costs and benefits.

Regarding reporting, cooperatives electing the cooperative exemption will have some reporting costs. The proposed rule requires that exempt cooperatives adhere to the reporting requirements of § 39.6(b). For each swap where the exemption is elected, either the cooperative or its counterparty (if the counterparty is an SD or MSP) must report: (1) That the election of the exemption is being made; (2) which party is the electing counterparty; and (3) certain information specific to the electing counterparty unless that information has already been provided by the electing counterparty through an annual filing. The third set of information comprises data that is likely to remain relatively constant for many, but not all, electing counterparties and therefore, does not require swap-by-swap reporting and can be reported less frequently. In addition, for entities that are registered with the SEC, the reporting party will also be required to report: (1) The SEC filer's central index key number; and (2) that an appropriate committee of the board of directors has approved the decision for that entity to enter into swaps that are exempt from the requirements of Sections 2(h)(1) and 2(h)(8) of the Act.

When entering into swaps with members and electing the exemption, exempt cooperatives will be responsible to report this information. When cooperatives enter into swaps with SDs or MSPs, the SDs or MSPs will be responsible to report this information. Entities would bear costs related to the personnel hours committed to reporting the required information. As described below in the subsection entitled ''Number of Exempt Cooperatives and Swaps'' in the section entitled ''Paperwork Reduction Act,'' the Commission estimates that approximately ten cooperatives will be eligible for the cooperative exemption. For purposes of estimating costs, the Commission assumes that each potential exempt cooperative is likely to function as the reporting counterparty for at least some of their exempted swaps in any given year because they would be responsible for reporting when transacting exempted swaps with members.

A review of information provided for five cooperatives that likely would be exempt cooperatives showed a range of swap usage from none to as many as approximately 200 swaps a year with most entering into less than 50 swaps a year. Using the high end of reported swaps for the five cooperatives for which information was available, an estimate of 50 swaps per year was calculated. The Commission believes this estimate is high because some of the reported swaps may not meet the requirements of the proposed rule and several cooperatives for which information was not available to the Commission likely undertake little if any, swap activity. However, for purposes of the cost calculations, the Commission assumes that each of the ten potential exempt cooperatives will enter into 50 swaps each year. Accordingly, we estimate that exempt cooperatives may elect the cooperative exemption for 500 swaps each year. The Commission invites comment regarding the estimated number of swaps conducted by each cooperative that would be eligible under this proposed rule. In addition, the Commission invites comment regarding the per cooperative average and total notional value of swaps that would be eligible under the cooperative exemption.

For each exempted swap, to comply with the swap-by-swap reporting requirements in §§ 39.6(b)(1)(i) and (ii), the reporting counterparty will be required to check one box indicating the exemption is being elected and complete one field identifying the electing counterparty. The Commission expects that this information will be entered into the appropriate reporting system concurrently with additional information that is required under the CEA and other Commission regulations promulgated thereunder. Therefore, each reporting counterparty is likely to spend 15 seconds to two minutes per transaction in incremental time entering the swap-by-swap information into the reporting system, or in the aggregate, 1.5 hours to 17 hours per year for all 500 estimated swaps. A financial analyst's average salary is $208/hour, which corresponds to approximately $1–$7 per transaction or in aggregate, $300–$3,500 per year for all 500 estimated swaps.[31]

Regulation 39.6(b)(1)(iii) allows for certain counterparty specific information identified therein to be reported either swap-by-swap by the reporting counterparty or annually by the electing counterparty. For the end-user exception for which that section also applies, the alternative options may be useful in instances where electing counterparties enter into very few swaps each year and the reporting counterparties will report this information for them on a swap-by-swap basis. However, for the cooperative exemption, the exempt cooperative is the electing counterparty and will also likely be the reporting counterparty for swaps entered into with members. Furthermore, the Commission expects that, assuming the cooperative is the reporting counterparty, the time burden for the first swap entered into by an exempt cooperative in collecting and reporting the information required by § 39.6(b)(1)(iii) will be approximately the same as the time burden for collecting and reporting the information for the annual filing. Given the cost equivalence for annual reporting to reporting a single swap if the exempt cooperative is both the electing and reporting counterparty, the Commission assumes that all ten exempt cooperatives will make an annual filing

[29] This assessment assumes similar levels of netting and compression in both uncleared and cleared portfolios. These assumptions are not necessarily valid in all cases. Moving swaps into clearing can—depending on the number of counterparties a market participant originally faced with uncleared swaps, the margin agreements in place with those counterparties, and the number of DCOs that eventually clear those positions—reduce the amount of margin that an entity has to post.

[30] Mello, Antonio S., and John E. Parsons, ''Margins, Liquidity, and the Cost of Hedging.'' MIT Center for Energy and Environmental Policy Research, May 2012.

[31] Wage estimates are taken from the SIFMA ''Report on Management and Professional Earnings in the Securities Industry 2011.'' Hourly wages are calculated assuming 1,800 hours per year and a multiplier of 5.35 to account for overhead and bonuses. In light of the challenges of developing precise estimates, the results of calculations have been rounded.

of the information required for § 39.6(1)(iii). The Commission estimates that it will take an average of 30 minutes to 90 minutes to complete and submit the annual filing. The average hourly wage for a compliance attorney is $390, which means that the annual per cooperative cost for the filing is likely to be between $200 and $590. If all ten eligible cooperatives were to undertake an annual filing, the aggregate cost would be $2,000 to $5,900.

Furthermore, when an exempt cooperative is not functioning as the reporting counterparty (i.e. when transacting with a SD or MSP), it may, at certain times, need to communicate information to its reporting counterparties in order to facilitate reporting. That information may include, among other things, whether the electing counterparty has filed an annual report pursuant to § 39.6(b) and information to facilitate any due diligence that the reporting counterparty may conduct. These costs will likely vary substantially depending on the number of different reporting counterparties with whom an electing counterparty conducts transactions, how frequently the electing counterparty enters into swaps, whether the electing counterparty undertakes an annual filing, and the due diligence that the reporting counterparty chooses to conduct. Therefore, the Commission believes that it is difficult to estimate these costs reliably at this time. Nevertheless, the Commission estimates that non-reporting electing counterparties will incur between five minutes and ten hours of annual burden hours, or in the aggregate, between approximately one hour and 100 hours. The hourly wage for a compliance attorney is $390, which means that the annual aggregate cost for communicating information to the reporting counterparty is likely to be between $400 and $39,000. Given the unknowns associated with this cost estimate noted above, the Commission does not believe this wide range can be narrowed without further information.

2. Costs and Benefits for Counterparties to Electing Cooperatives

Reduced clearing of swaps by exempt cooperatives likely will increase counterparty risk for both exempt cooperatives and their counterparties. Cooperatives will be more exposed to financial instability in their counterparties, and conversely, the cooperatives' counterparties may be exposed to any instability that might develop within the exempt cooperatives. This could be problematic for an exempt cooperative if one of the dealers with which the cooperative has large uncleared positions experiences financial instability, or if groups of members whose financial strength may be highly correlated and whose aggregate uncleared positions with the cooperative are large, encounter financial challenges. Conversely, if an exempt cooperative becomes insolvent and its positions with a SD or MSP are substantial, it is possible that its uncleared positions could be large enough to create or exacerbate instability at the SD or MSP, and could also create significant exposure for the members the cooperative serves. In this way, financial instability at one of the cooperative's counterparties could adversely impact the other counterparties of that cooperative. However, these risks may be mitigated through negotiated collateral agreements between exempt cooperatives and their counterparties. The Commission understands that many swaps in the uncleared market are subject to such agreements.[32] The Commission invites comment on the size of exposures between potential exempt cooperatives and other financial entities, the size and number of positions between exempt cooperatives and their members, and the extent to which uncleared swaps between exempt cooperatives and financial entities, and transactions between exempt cooperatives and their members, are currently collateralized. Please quantify estimates, where possible.

In a similar vein, some members of exempt cooperatives are commercial entities that, in the absence of this exemption, could elect not to clear swaps by using the end-user exception. The proposed cooperative exemption does not affect the ability of those members to elect the end-user exemption, but it does constrain their ability to forego the end-user exception when entering into transactions with exempt cooperatives that are eligible for the proposed exemption. In other words, either the exempt cooperative or the member may elect not to clear the swap, and neither party may compel the other to clear the swap. To the extent that members are unconstrained in their choice of counterparties, this is not problematic. Members could still go to a SD or other financial entity, which has no clearing exemption election ability, to access the terms and counterparty protection that a cleared position provides. However, if members are constrained in their choice of counterparties (i.e. if they do not have sufficient size or experience to transact with a SD, or if they need the collateral that is already pledged with the loan to secure a corresponding swap) they will not be able to elect a cleared transaction when using swaps that are required to be cleared unless the cooperative agrees to clearing. The Commission invites comment regarding the extent to which this consideration represents a cost to members of cooperatives that would be eligible for the exemption under the criteria proposed in this rule. If possible, please quantify any such costs.

3. Costs and Benefits to the Public

The public generally has an interest in required clearing because of its potential to reduce counterparty risk among large, interconnected institutions, and to facilitate rapid resolution of outstanding positions held by such institutions in the event of their default. By narrowly crafting the proposed cooperative exemption to incorporate qualifying criteria limiting both the types of institutions and the types of swaps that are eligible, the Commission expects the proposed exemption to appropriately conserve this public interest. Moreover, for this narrow category of swaps proposed for exemption, the potential remains for exempt cooperatives and their counterparties to mitigate residual counterparty risk through negotiated collateral agreements. The Commission invites comment regarding the extent to which this proposed exemption would impose costs or provide benefits on the public, including the expected impact of negotiated collateral agreements. Please provide quantification where possible.

D. Costs and Benefits Compared to Alternatives

The proposed cooperative exemption includes two important limiting criteria. First, each member of a cooperative must independently be able to elect the end-user exception or be a cooperative whose members can elect the end-user exception. Second, the swaps for which exempt cooperatives may make use of the proposed rule only includes those entered into by the cooperative with its members in connection with originating loans or swaps that hedge or mitigate risks associated with such swaps or associated with member loans.

The Commission considered including cooperatives consisting of members that could not elect the end-user exception. Such an exemption would assist in ensuring that a greater number of cooperatives and their members are able to elect not to clear

[32] The 2012 ISDA Margin Survey indicates that 71% of all OTC derivatives transactions were subject to collateral agreements during 2011, but notes that the degree of collateralization may vary significantly depending on the type of derivative and counterparties entering into a transaction.

swaps. However, the Commission believes that such an exemption would significantly undermine Congress' intent to promote clearing and be inconsistent with the end-user exception provided for in Section 2(h)(7) of the CEA. This alternative could allow any large financial entities such as SDs or MSPs, which Congress clearly intended the clearing requirement to apply to without exception, to form cooperatives with other entities that would be exempt from the clearing requirement. By contrast, with the proposed provision, the Commission is assuring that the cooperative exemption does not become overly broad and available to cooperatives with members that are financial entities as defined in Section 2(h)(7)(C) of the CEA.

The Commission also considered exempting any swap transacted by an exempt cooperative. However, the Commission was concerned that financial entities such as SDs, MSPs, or non-member borrowers that are financial entities would be able to avoid clearing by entering into swaps through an exempt cooperative. For example, from a SD's perspective, taking a long position on a swap with another SD would require clearing. However, the two parties could have essentially the same economic arrangement if the first SD goes long on the swap with an exempt cooperative, and the second SD takes a short position on the same swap with the same exempt cooperative. The exempt cooperative would be even, and the two SDs would have created a synthetic swap that avoided the clearing requirement. The proposed provision avoids such a scenario by ensuring that the cooperative exemption is only used as a pass through for swaps with members who would themselves be able to elect the end-user exception and for swaps that hedge or mitigate risk in connection member loans or swaps as would be required by Section 2(h)(7)(A)(ii) of the CEA.

The Commission invites comment regarding the extent to which the requirements in the definition of exempt cooperative may be too restrictive for cooperatives that the commenter believes should have the benefit of the proposed cooperative exemption or are not restrictive enough to protect the public interest in requiring clearing of certain swaps. Similarly, the Commission invites comment on whether the limitation on the types of swaps for which the cooperative exemption may be elected should be expanded or further limited and why. Please describe such specific expansion or further limitation contemplated and the costs and benefits that could result therefrom.

E. Section 15(a) Factors

1. Protection of Market Participants and the Public

As described above, allowing exempt cooperatives to exempt certain swaps from required clearing will reduce the DCO and FCM clearing fees that such entities may otherwise bear. This, in turn, provides benefits to the members of exempt cooperatives, who would otherwise absorb such costs as they are passed through by the cooperatives to their members in the form of fees or less desirable spreads on swaps or loans conducted with the cooperative. In addition, the exemption may reduce the amount of capital that exempt cooperatives must allocate to margin accounts with their FCM.

The proposed rule is narrowly tailored to exempt only swaps that are associated with positions established in connection with loans made to customers, or that hedge or mitigate risk arising in connection with such member loans or swaps. Further, it is otherwise generally consistent with the requirements for the end-user exception as provided in Section 2(h)(7) of the CEA and § 39.6. Given the proposed cooperative exemption's limited scope and the remaining potential for exempt cooperatives and their counterparties to mitigate residual counterparty risk through negotiated collateral agreements, the Commission does not anticipate that the proposed rule would materially compromise protection of market participants and the public. The Commission requests comment on the extent to which the limitations on the entities and transactions eligible for the proposed exemption will limit risk to market participants and the public. If possible, please quantify relevant estimates.

2. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

While the proposed rule would take swaps out of clearing, it limits any compromise of the financial integrity of the swap markets insomuch as it is narrowly tailored to include only cooperatives that are made up entirely of entities that could elect the end-user exception, and only swaps related to originating loans between the cooperative and such members. The Commission invites comment on the effects of the proposed rule on efficiency, competitiveness, and financial integrity of swap markets.

3. Price Discovery

Clearing, in general, encourages better price discovery because it eliminates the importance of counterparty creditworthiness in pricing swaps cleared through a given DCO. That is, by making the counterparty creditworthiness of all swaps of a certain type essentially the same, prices should reflect factors related to the terms of the swap, rather than the idiosyncratic risk posed by the entities trading it.[33] To the extent that the cooperative exemption reduces the number of swaps subject to required clearing, it will lessen the beneficial effects of required clearing for price discovery. However, the Commission assumes that the number of swaps eligible for this exemption, estimated above at 500 a year, will be a de minimis fraction of all those that are otherwise required to be cleared. The Commission invites comment on the effects of the proposed rule on price discovery.

4. Sound Risk Management Practices

To the extent that a swap is removed from clearing, all other things being constant, it is a detriment to a sound risk management regime. To the extent that exempt cooperatives enter into uncleared swaps on the basis of this proposed rule, it likely increases the amount of counterparty risk that exempt cooperatives and their counterparties face. For the public, it increases the risk that financial distress at one or more cooperatives could spread to other financial institutions with which those cooperatives have concentrated positions. However, as discussed above, this additional risk may be reduced by the presence of bilateral margin agreements, which the Commission believes are often used in the absence of clearing. Furthermore, the Commission believes that, given the small number of swaps that will be exempted from clearing as a result of the proposed rule, estimated above to be 500 each year, these risks to the public will be minimized. The Commission invites comment regarding the effect of the proposed rule on the risk exposure of the cooperatives meeting the criteria proposed in this rule, their counterparties, and the public. Where possible, please quantify any costs or benefits that are relevant.

[33] *See* Chen, K., et al. ''An Analysis of CDS Transactions: Implications for Public Reporting,'' September 2011, Federal Reserve Bank of New York Staff Reports, at 14.

5. Other Public Interest Considerations

The Commission has not identified any public interest considerations relevant to this proposed rule beyond those already noted above.

F. Public Comment on the Cost-Benefit Considerations

The Commission invites public comment on all aspects of the cost-benefit considerations. More specifically, the Commission also requests comment on the following.

Would a cooperative exemption have any adverse impact on competition?

Would a cooperative exemption have an impact on fees or other charges for any products and/or services?

Would a cooperative exemption result in efficiencies or other benefits not described in this NPRM?

Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act [34] (''RFA'') requires that agencies consider whether proposed rules will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis on the impact.

The proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would affect cooperatives, their members, and potentially the counterparties with whom they trade. These entities could be SDs, MSPs, and eligible contract participants (ECPs).[35] The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA. In that regard, the Commission has certified previously that SDs and MSPs are not small entities for purposes of the RFA.[36] The Commission is making a similar determination for purposes of this proposal. The proposed rules would also affect SDRs, which the Commission has similarly determined not to be small entities for purposes of the RFA. The Commission is making the same determination with respect to the proposed rules.

The Commission has previously determined that ECPs are not small entities for purposes of the RFA.[37] However, in its proposal of rule § 39.6, the Commission received a joint comment (''Electric Associations Letter'') from the National Rural Electric Cooperative Association, the American Public Power Association and the Large Public Power Council (the ''Associations'') asserting that certain members of the Associations may both be ECPs under the CEA and small businesses under the RFA.[38] These members of the Associations, as the Commission understands, have been determined to be small entities by the Small Business Administration (''SBA'') because they are ''primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and [their] total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' [39] The Electric Associations Letter states that the Associations' members are ''not financial entities'' and ''engage in swaps only to mitigate or hedge commercial risks.'' [40] Because the Associations' members that have been determined by the SBA to be small entities would be using swaps to hedge commercial risk, the Commission expects that they would be able to use the end-user exception from the clearing requirement and therefore would not be affected to any significant extent by this proposed exemption.

Accordingly, because nearly all of the entities that may be affected by the proposed cooperative exemption are not small entities, and because the few ECPs that have been determined by the SBA to be small entities are unlikely to be affected to any significant extent by the proposed exemption, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed regulation would not have a significant economic impact on a substantial number of small entities. The Commission invites public comment on this determination.

B. Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (PRA) [41] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (OMB). Certain provisions of this proposed rule would result in new collection of information requirements, within the meaning of the PRA, for exempt cooperatives. These new reporting requirements for exempt cooperatives are not currently covered by any existing OMB control number and OMB has not yet assigned a control number for this new collection. The Commission therefore is submitting this proposal to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

The title for this collection of information is ''Rule 39.6(f) Cooperative Clearing Exemption Notification.'' If adopted, this new collection of information would be mandatory for those parties availing themselves of the cooperative exemption. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR Part 145, ''Commission Records and Information.'' In addition, Section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

2. Information Provided by Reporting Entities

This proposed cooperative exemption rule would trigger certain reporting conditions under proposed § 39.6(f)(3) that must be satisfied for exempt cooperatives. These conditions are designed to notify the Commission when the exemption from the clearing requirements in Section 2(h)(1)(A) of the CEA is being elected, address Commission concerns regarding exempt cooperative swap risk, and provide the Commission with information necessary to regulate swap markets. In particular,

[34] *See* 5 U.S.C. 601 *et seq.*

[35] It is possible that a cooperative or members thereof may not be ECPs. However, pursuant to Section 2(e) of the CEA, if a counterparty to a swap is not an ECP, then such swap must be entered into on, or subject to the rules of, a board of trade designated as a contract market under Section 5 of the CEA. All such swaps are required to be cleared by the board of trade. In effect all swaps entered into by a cooperative or a member that is not an ECP will need to be executed on a board of trade and therefore will be cleared.

[36] *See* 77 FR 30596, 30701 (May 23, 2012).

[37] *See* 66 FR 20740, 20743 (Apr. 25, 2001).

[38] *See* joint letter from EEI, NRECA, and ESPA, dated Nov. 4, 2011, (Electric Associations Letter), commenting on Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 FR 58186 (Sept. 20, 2011).

[39] Small Business Administration, Table of Small Business Size Standards, Nov. 5, 2010.

[40] *See* Electric Associations Letter, at 2.

[41] 44 U.S.C. 3501 *et seq.*

the reporting conditions in proposed § 39.6(f)(3), which requires compliance with reporting requirements under § 39.6(b) for swaps for which the cooperative exemption is elected, would establish new collection of information requirements within the meaning of the PRA. Additionally, exempt cooperatives may be required to supplement their reporting systems for purposes of complying with the proposed reporting requirements.

For each swap where the exemption is elected, either the cooperative or its counterparty (if the counterparty is an SD or MSP) must report: (1) That the election of the exemption is being made; (2) which party is the electing counterparty; and (3) certain information specific to the electing counterparty unless that information has already been provided by the electing counterparty through an annual filing. The third set of information comprises data that is likely to remain relatively constant for many, but not all, electing counterparties and therefore, does not require swap-by-swap reporting and can be reported less frequently. In addition, for entities that are registered with the SEC, the reporting party will also be required to report: (1) The SEC filer's central index key number; and (2) that an appropriate committee of the board of directors has approved the decision for that entity to enter into swaps that are exempt from the requirements of Section 2(h)(1)(A) of the CEA.

When entering into swaps with members and electing the exemption, exempt cooperatives will likely be responsible to report this information. When cooperatives enter into swaps with SDs or MSPs, the SDs or MSPs will be responsible to report this information. However, the cooperatives would bear costs related to the personnel hours committed to reporting the required information.

The Commission provides estimates of the time burden required for exempt cooperatives to comply with the proposed requirements below.[42] The estimates include quantifiable costs, including one-time and annual burden hours and costs per cooperative, and costs that are incurred on a swap-by-swap basis. The dollar estimates are offered as ranges with upper and lower bounds, which is necessary to accommodate uncertainty regarding the estimates.

[42] *See* 5 CFR 1320.3(b) for the definition of the term ''burden.''

3. Number of Exempt Cooperatives and Swaps

The total reporting related costs of the cooperative exemption would depend on the number of cooperatives electing the cooperative exemption, as well as the number of swaps for which cooperatives would elect to use the exemption. In addition, as described in more detail below, the cost will also depend on whether the cooperatives choose the annual reporting option permitted by the proposed rule.

To identify the number of cooperatives that could elect the cooperative exemption, the Commission first considered what types of cooperatives may be financial entities with total assets in excess of $10 billion since non-financial cooperatives or cooperatives that are financial entities with assets of $10 billion or less can use the end-user exception in the alternative and the costs of reporting thereunder have already been addressed in the end-user exception rulemaking. Given the comments received for the end-user exception NPRM regarding cooperatives and consideration of other financial cooperatives the Commission is aware of, the Commission believes that cooperatives that may meet the definition of exempt cooperative could be farm credit system cooperatives, credit unions, and financial cooperatives that provide financing in the rural electric space. Based on a review of data available from the regulators for these entities and information provided by commenters, the Commission believes there are approximately ten cooperatives that will meet the definition of ''financial entity'' in Section 2(h)(7)(C)(i)(VIII) of the CEA and which will not be exempt from that definition as small financial institutions because they have total assets in excess of $10 billion. Each of these is likely to function as the reporting counterparty for at least some of their exempted swaps in any given year since they would likely be responsible for reporting when transacting exempted swaps with members.

A review of information provided for five cooperatives that likely would be exempt cooperatives showed a range of swap usage from none to as many as approximately 200 swaps a year with most entering into less than 50 swaps a year. Using the high end of reported swaps for the five cooperatives for which information was available, an estimate of 50 swaps per year was calculated. The Commission believes this estimate is high because some of the reported swaps may not meet the requirements of the proposed rule and several cooperatives for which information was not available to the Commission likely undertake little, if any, swap activity. However, for purposes of the cost calculations, we will assume that each of the ten potential exempt cooperatives will enter into 50 swaps per year. Accordingly, we estimate that exempt cooperatives may elect the cooperative exemption for 500 swaps each year.

4. Proposed § 39.6(f)(3) Reporting Requirements Cost Estimate

a. Ongoing Reporting Burden Hours and Costs

Proposed § 39.6(f)(3) would require exempt cooperatives that are reporting counterparties to comply with the reporting requirements in paragraph (b) of § 39.6, which require delivering specified information to a registered SDR or, if no registered SDR is available, the Commission. Counterparties must also undertake reporting pursuant to § 39.6(b) if the end-user exception is elected.

Assuming that the exempt cooperative is the reporting counterparty, it would have to report the information required in § 39.6(b)(1)(i) and (ii) for each swap for which it elects the cooperative exemption. To comply with § 39.6(b)(1)(i) and (ii), each reporting counterparty would be required to check one box in the SDR or Commission reporting data fields indicating that the exempt cooperative is electing not to clear the swap. The Commission expects that each reporting counterparty would likely spend 15 seconds to two minutes per transaction entering this information into the reporting system, or in the aggregate, 1.5 hours to 17 hours per year for all 500 estimated swaps. Using a financial analyst's average salary of $208/hour, these burden hour costs would equal between less than $1 and $7 for each transaction, or approximately $300 to $3,500 per year for all 500 transactions.[43]

Regulation 39.6(b)(1)(iii) allows for certain counterparty specific information identified therein to be reported either swap-by-swap by the reporting counterparty or annually by the electing counterparty. For the end-user exception, the alternative options may be useful in instances where electing counterparties enter into very

[43] Wage estimates are taken from the SIFMA ''Report on Management and Professional Earnings in the Securities Industry 2011.'' Hourly wages are calculated assuming 1,800 hours per year and a multiplier of 5.35 to account for overhead and bonuses. In light of the challenges of developing precise estimates, the results of all calculations have been rounded.

few swaps each year and the reporting counterparties will report this information for them on a swap-by-swap basis. However, for the cooperative exemption, the exempt cooperative is the electing counterparty and will also likely be the reporting counterparty for swaps entered into with members. Furthermore, the Commission expects that, assuming the cooperative is the reporting counterparty, the time burden for the first swap entered into by an exempt cooperative in collecting and reporting the information required by § 39.6(b)(1)(iii) will be approximately the same as the time burden for collecting and reporting the information for the annual filing. Given the cost equivalence for annual reporting to reporting a single swap if the exempt cooperative is the electing counterparty and the reporting counterparty, the Commission assumes that all ten exempt cooperatives will make an annual filing of the information required for § 39.6(1)(iii). The Commission estimates that it will take an average of 30 minutes to 90 minutes to complete and submit the annual filing. The average hourly wage for a compliance attorney is $390, which means that the annual per cooperative cost for the filing is likely to be between $200 and $590. If all ten eligible cooperatives were to undertake an annual filing, the aggregate cost would be $2,000 to $5,900.

b. Other Costs

i. Updating Reporting Procedures

The Commission believes that cooperatives electing the cooperative exemption would have established reporting systems to comply with other Commission rules regarding swap reporting generally. Reporting counterparties may need to modify their reporting systems in order to accommodate the additional data fields required by this rule. The Commission estimates that those modifications would create a one-time expense of approximately one to ten burden hours per reporting counterparty. The Commission estimates that the hourly wage for a senior programmer is $341, which means that the one-time, per entity cost for modifying reporting systems to comply with proposed § 39.6(f)(3) would likely be between $340 and $3,400, and the aggregate one-time cost for all ten potential exempt cooperatives is estimated to be $3,400 to $34,100.

ii. Burden on Non-Reporting Cooperatives

When an exempt cooperative is not functioning as the reporting counterparty (i.e. when transacting with a SD or MSP), it may, at certain times, need to communicate information to its reporting counterparties in order to facilitate reporting. That information may include, among other things, whether the exempt cooperative has filed an annual report pursuant to § 39.6(b) and information to facilitate any due diligence that the reporting counterparty may conduct. These costs will likely vary substantially depending on the number of different reporting counterparties with whom an exempt cooperative conducts transactions, how frequently the exempt cooperative enters into swaps, whether the exempt cooperative undertakes an annual filing, and the due diligence that the reporting counterparty chooses to conduct. Therefore, the Commission believes that it is difficult to estimate these costs reliably at this time. Nevertheless, the Commission estimates that a non-reporting exempt cooperative will incur between five minutes and ten hours of annual burden hours. The hourly wage for a compliance attorney is $390, which means that the annual aggregate cost for communicating information to the reporting counterparty is likely to be between $400 and $39,000. Given the unknowns associated with this cost estimate noted above, the Commission does not believe this wide range can be narrowed without further information.

c. Reporting Cost Summary

The reporting costs described above are summarized in the following table.

SUMMARY OF REPORTING-RELATED COSTS

Reporting	Aggregate hours per annum [44]	Cost range [45]	Notes
(1) Swap-by-Swap Reporting to SDR or Commission (§§ 39.6(b)(1)(i) and (ii)).	1.5–17	$300 to $3,500 ($208/hour)	This assumes that all exempt cooperatives will be reporting counterparties.
(2) Electing Counterparty Annual Reporting (§ 39.6(b)(1)(iii)).	5–15	$2,000–$5,900 ($390/hour)	This assumes that all exempt cooperatives will be reporting counterparties and will elect annual reporting for § 39.6(b)(1)(iii) information.
(3) Updating Reporting Procedures (§ 39.6(f)(3)).	10–100	$3,400–$34,100 ($341/hour)	This assumes that all exempt cooperatives will have to update reporting procedures. This is a one-time cost in the first year.
(4) Non-Reporting Counterparties (§ 39.6(f)(3))	1.0–100	$400–$39,000 ($390/hour)	This estimate assumes all exempt cooperatives are non-reporting counterparties for some swaps and each spends between five minutes to ten hours each year on this task.
Estimated Reporting Total	18–232 (125 midpoint)	$6,100–$82,500 ($44,300 midpoint)	Sum of rows (1) through (4).

3. Information Collection Comments

The Commission invites public comment on any aspect of the reporting burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

[44] Hours estimates reflect total burden hours for the ten exempt cooperatives, rounded to nearest half-hour.

[45] The total burden costs are aggregate costs for the ten exempt cooperatives, rounded to nearest hundred dollars.

Comments may be submitted directly to the Office of Information and Regulatory Affairs (''OIRA'') in OMB, by fax at (202) 395–6566, or by email at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that they can be considered in connection with a final rule. Refer to the Addresses section of this release for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting *www.RegInfo.gov.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication.

List of Subjects in 17 CFR Part 39

Business and industry, Clearing, Commodity futures, Cooperatives, Reporting requirements, Swaps.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 39 as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

1. The authority citation for part 39 continues to read as follows:

Authority: 7 U.S.C. 2 and 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

2. Amend § 39.6, to add paragraph (f) to read as follows:

§ 39.6 Exceptions to the clearing requirement.

* * * * *

(f) *Exemption for cooperatives.* Exempt cooperatives may elect not to clear certain swaps identified in paragraph (f)(2) of this section that are otherwise subject to the clearing requirement of section 2(h)(1)(A) of the Act if the following requirements are satisfied.

(1) For the purposes of this paragraph, an *exempt cooperative* means a cooperative:

(i) Formed and existing pursuant to Federal or state law as a cooperative;

(ii) That is a ''financial entity,'' as defined in section 2(h)(7)(C)(i) of the Act, solely because of section 2(h)(7)(C)(i)(VIII) of the Act; and

(iii) Each member of which is not a ''financial entity,'' as defined in section 2(h)(7)(C)(i) of the Act, or if any member is a financial entity solely because of section 2(h)(7)(C)(i)(VIII) of the Act, such member is:

(A) Exempt from the definition of ''financial entity'' pursuant to paragraph (d) of this section; or

(B) A cooperative formed under Federal or state law as a cooperative and each member thereof is either not a ''financial entity,'' as defined in section 2(h)(7)(C)(i) of the Act, or is exempt from the definition of ''financial entity'' pursuant to paragraph (d) of this section.

(2) An exempt cooperative may elect not to clear a swap that is subject to the clearing requirement of section 2(h)(1)(A) of the Act if the swap:

(i) Is entered into with a member of the exempt cooperative in connection with originating a loan or loans for the member, which means the requirements of § 1.3(ggg)(5)(i), (ii), and (iii) are satisfied; *provided that,* for this purpose, the term ''insured depository institution'' as used in those sections is replaced with the term ''exempt cooperative'' and the word ''customer'' is replaced with the word ''member;'' or

(ii) Hedges or mitigates commercial risk, in accordance with paragraph (c) of this section, related to loans to members or arising from a swap or swaps that meet the requirements of paragraph (f)(2)(i) of this section.

(3) An exempt cooperative that elects the exemption provided in paragraph (f) of this section shall comply with the requirements of paragraph (b) of this section. For this purpose, the exempt cooperative shall be the ''electing counterparty,'' as such term is used in paragraph (b), and for purposes of paragraph (b)(1)(iii)(A), the reporting counterparty shall report that an exemption is being elected in accordance with paragraph (f) of this section.

Issued in Washington, DC, on July 10, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Clearing Exemption for Certain Swaps Entered Into by Cooperatives—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rule that would permit certain cooperatives to choose not to clear member-related swaps.

One of the primary goals of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was to lower risk to the financial system by requiring standardized swaps between financial entities to be cleared.

Congress provided that non-financial entities, such as farmers, ranchers, manufacturers and other end users, should be able to choose whether or not to clear those swaps that hedge or mitigate commercial risks.

Cooperatives act on behalf of and are an extension of their members. Thus, I believe it is appropriate that those cooperatives made up entirely of members that could individually qualify for the end-user exception should qualify as well themselves as end users in certain circumstances.

The proposed cooperative exemption is narrowly tailored, and extends only to:

- Swaps entered into with members of the cooperative in connection with originating loans for members; and
- Swaps entered into by a cooperative to hedge or mitigate risks associated with member loans or member loan related swaps.

[FR Doc. 2012–17357 Filed 7–16–12; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

Correction to Modification of Regulations Regarding the Definition of Factual Information and Time Limits for Submission of Factual Information

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Joanna Theiss at (202) 482–5052.

Correction

On July 10, 2012, the Department of Commerce published in the **Federal Register** the following notice: *Modification of Regulations Regarding the Definition of Factual Information and Time Limits for Submission of Factual Information,* 77 FR 40534 (July 10, 2012) (''*Modification of Factual Information Regulations''*). After publication of *Modification of Factual Information Regulations,* we identified an inadvertent error in this notice. Specifically, the notice does not include a Docket Number for the submission of comments through the Federal eRulemaking Portal. The Docket Number is Docket No. ITA–2012–0004. To be assured of consideration, comments must be received by August 24, 2012.

Dated: July 10, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–17284 Filed 7–16–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. FDA–2012–F–0728]

Representative Edward J. Markey; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Representative Edward J. Markey has filed a petition proposing that the food additive regulations be amended to no longer provide for the use of Bisphenol A (BPA)-based epoxy resins as coatings in packaging for infant formula because these uses have been abandoned. FDA expressly requests comments on the petitioner's request.

DATES: Submit either electronic or written comments by September 17, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2012–F–0728 by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2012–F–0728. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vanee Komolprasert, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1217.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2B4791) has been filed by Representative Edward J. Markey, House of Representatives, 2108 Rayburn House Office Building, Washington, DC 20515–2107. The petition proposes to amend the food additive regulations in § 175.300 (21 CFR 175.300) to no longer provide for the use of BPA-based epoxy resins as coatings in packaging for infant formula because these uses have been intentionally and permanently abandoned. BPA-based epoxy resins are formed by the reaction of 4,4'-isopropylenediphenol (i.e., BPA), and epichlorohydrin.

II. Abandonment

Under section 409(i) of the FD&C Act, FDA ''shall by regulation prescribe the procedure by which regulations under the foregoing provisions of this section may be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of such regulations.'' FDA's regulations specific to administrative actions for food additives provide as follows: ''The Commissioner, on his own initiative or on the petition of any interested person, pursuant to part 10 of this chapter, may propose the issuance of a regulation amending or repealing a regulation pertaining to a food additive or granting or repealing an exception for such additive.'' (§ 171.130(a) (21 CFR 171.130(a))). These regulations further provide: ''Any such petition shall include an assertion of facts, supported by data, showing that new information exists with respect to the food additive or that new uses have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the existing regulation or exemption may justify its amendment or appeal. New data shall be furnished in the form specified in §§ 171.1 and 171.100 for submitting petitions.'' (§ 171.130(b)). Under these regulations, a petitioner may propose that FDA amend a food additive regulation if the petitioner can demonstrate that there are ''old uses abandoned'' for the relevant food additive. Such abandonment must be complete for any intended uses in the U.S. market. While section 409 of the FD&C Act and § 171.130 also provide for amending or revoking a food additive regulation based on safety, an amendment or revocation based on abandonment is not based on safety, but is based on the fact that the regulatory authorization is no longer necessary because the use of the food additive has been abandoned.

Abandonment may be based on the abandonment of certain authorized food additive uses for a substance (e.g., if a substance is no longer used in certain product categories), or on the abandonment of all authorized food additive uses of a substance (e.g., if a substance is no longer being manufactured). If a petition seeks an amendment to a food additive regulation based on the abandonment of certain uses of the food additive, such uses must be adequately defined so that both the scope of the abandonment and any amendment to the food additive regulation are clear.

The petition submitted by Representative Markey contains public information and information collected from a survey of the U.S. registered manufacturers of infant formula to support the petitioner's claim that all U.S. infant formula manufacturers have abandoned the use of BPA-based epoxy resins as coatings in all food contact packaging for infant formula. According to the petition, these companies accounted for 100% of the current infant formula market in the United States.

FDA expressly requests comments on the petitioner's request that FDA amend the food additive regulations to no longer permit the use of BPA-based epoxy resins as coatings in packaging for infant formula. For the purposes of this petition, FDA considers the use of BPA-based epoxy resins as coatings (as described in § 175.300(a)) in packaging of infant formula to mean a metal substrate (single use) or any suitable substrate (repeated use) being coated with BPA-based epoxy resins as a continuous film or enamel, serving as a functional barrier between the infant formula (powder or liquid) and the substrate. As noted, the basis for the proposed amendment is that the use of

BPA-based epoxy resins as coatings in packaging for infant formula has been permanently and completely abandoned. Accordingly, FDA requests comments that address whether these uses of BPA-based epoxy resins have been completely abandoned, such as information on whether infant formula packaging containing BPA-based epoxy resins as coatings is currently being introduced or delivered for introduction into the U.S. market. Further, FDA requests comments on whether the uses that are the subject of the petition (BPA-based epoxy resins as coatings in infant formula packaging) have been adequately defined. FDA is not aware of information that suggests continued use of BPA-based epoxy resins as coatings in packaging for powder or liquid infant formula. FDA is providing the public 60 days to submit comments. FDA anticipates that some interested persons may wish to provide FDA with certain information that they consider to be trade secret or confidential commercial information (CCI) that would be exempt under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552). Interested persons may claim information that is submitted to FDA as CCI or trade secret by clearly marking both the document and the specific information as ''confidential.'' Information so marked will not be disclosed except in accordance with the Freedom of Information Act (5 U.S.C. 552) and FDA's disclosure regulations (21 CFR part 20). For electronic submissions to *http://www.regulations.gov,* indicate in the ''comments'' box of the appropriate docket that your submission contains confidential information. Interested persons must also submit a copy of the comment that does not contain the information claimed as confidential for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice.

FDA is not requesting comments on the safety of these uses of BPA-based epoxy resins as coatings because, as discussed previously, such information is not relevant to establishing abandonment as the basis of the proposed action. Any comments addressing the safety of BPA-based epoxy resins or containing safety information on these resins will not be considered in FDA's evaluation of this petition. Separate from FDA's consideration of this petition, FDA is actively assessing the safety of BPA (see 75 FR 17145, April 5, 2010; see also *http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm064437.htm).*

FDA has determined under 21 CFR 25.32(m) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: July 12, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17367 Filed 7–16–12; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0406; FRL–9699–2]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request submitted by the Indiana Department of Environmental Management on May 14, 2012, to revise the Indiana State Implementation Plan (SIP). The submission revises the Indiana Administrative Code (IAC) definition of ''References to the Code of Federal Regulations,'' from the 2009 edition to the 2011 edition.

DATES: Comments must be received on or before August 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0406 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register.**

Dated: June 27, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–17263 Filed 7–16–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 11–116 and 09–158; CC Docket No. 98–170; FCC 12–42; DA 12–1039]

Empowering Consumers To Prevent and Detect Billing for Unauthorized Charges (''Cramming''); Consumer Information and Disclosure; Truth-in-Billing and Billing Format

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: In this document, the Commission extends the deadline for filing reply comments on the Commission's Further Notice of Proposed Rulemaking (*FNPRM*) proposing additional rules to help consumers prevent and detect the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as cramming. The extension will facilitate the development of a full record given the importance of the issues in this proceeding.

DATES: Reply comments are due on or before July 20, 2012.

ADDRESSES: You may submit reply comments, identified by CG Docket No. 11–116 by any of the following methods:

- Federal Communications Commission's Web site: *http://fjallfoss.fcc.gov/ecfs2/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Melissa Conway, FCC, Consumer and Governmental Affairs Bureau, Consumer Policy Division, at (202) 418–2887 (voice), or email *Melissa.Conway@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order, document DA 12–1039, adopted on June 29, 2012, and released on June 29, 2012, in CG Docket Nos. 11–116 and 09–158, and CC Docket No. 98–170, which extends the reply comment filing deadline established in the *FNPRM,* FCC 12–42, published at 77 FR 30972, May 24, 2012. The full text of document DA 12–1039 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or Internet: *www.bcpiweb.com*. The full text of document DA 12–1039 may also be downloaded at: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0629/DA-12-1039A1.doc.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Pursuant to 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); or (2) by filing paper copies. All filings should reference the docket number of this proceeding, CG Docket No. 11–116.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes or boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.
- In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com.*

Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Paperwork Reduction Act of 1995

In the Commission's *FNPRM,* FCC 12–42, it seeks comment on potential new information collection requirements. If the Commission adopts any new information collection requirement, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, in the Commission's *FNPRM,* it seeks comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission's document DA 12–1039 does not contain new or modified information collection requirements subject to the PRA, Public Law 104–13. Therefore, it does not contain any new or modified information collection burden for small business concerns with few than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis

Background

The Commission's document FCC 12–42 established a comment deadline of June 25, 2012, and a reply comment deadline of July 9, 2012. On June 26, 2012, the National Association of State Utility Consumer Advocates (NASUCA) requested that the reply comment deadline be extended by 30 days because of the volume of initial comments, the Fourth of July holiday, and the occurrence of NASUCA's midyear meeting during the reply comment period. The Commission grants NASUCA's request in part.

As stated in § 1.46(a) of the Commission's rules, 47 CFR 1.46(a), the Commission's policy is that extensions of time are not routinely granted. In the interest of encouraging development of a full record, the Commission believes that an extension of time is in the public interest and that an 11-day extension will provide adequate time for development of reply comments. The Commission grants an 11-day extension of the reply comment deadline.

Ordering Clause

Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), and §§ 0.141, 0.361, and 1.46 of the Commission's rules, 47 CFR 0.141, 0.361, 1.46, that the Motion for Extension of Time to File Reply Comments filed by the National Association of State Utility Consumer Advocates is granted to the extent indicated herein and is otherwise denied, and the deadline for filing reply comments in response to document FCC 12–42 is extended to July 20, 2012.

Federal Communications Commission.

Kris Anne Monteith,

Acting Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2012–17403 Filed 7–16–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 301

[Docket No. 110627357–2209–03]

RIN 0660–AA26

Relocation of and Spectrum Sharing by Federal Government Stations—Technical Panel and Dispute Resolution Board

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Telecommunications and Information Administration (NTIA) proposes to adopt regulations governing the Technical Panel and dispute resolution boards established by Congress to facilitate the relocation of, and spectrum sharing with, U.S. Government stations in spectrum bands reallocated from Federal use to non-Federal use or to shared use. This action is necessary to ensure the timely relocation of Federal entities' spectrum-related operations and, where applicable, the timely implementation of arrangements for the sharing of radio frequencies. Specifically, this action would implement certain additions and modifications to the NTIA Organization Act through the recent enactment of the Middle Class Tax Relief and Job Creation Act of 2012.

DATES: Submit comments on or before August 1, 2012.

ADDRESSES: The public is invited to submit written comments in paper or electronic form. Written comments may be submitted by email to *CSEAchanges@ntia.doc.gov.*

Comments submitted by email should be machine searchable and should not be copy-protected. Written comments also may be submitted by mail to Milton Brown, Office of Chief Counsel, National Telecommunications and Information Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue NW., Room 4713, Washington, DC 20230. Each commenter should include the name of the person or organization filing the comment as well as a page number on each page of the submission. All comments received will be made a part of the public record in this proceeding and will be posted to NTIA's Web site (*http://www.ntia.doc.gov*) without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Milton Brown, NTIA, (202) 482–1816.

SUPPLEMENTARY INFORMATION:

Authority: National Telecommunications and Information Administration Organization Act, 47 U.S.C. 901 *et seq.,* as amended by the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, Title VI, Subtitle G, 126 Stat. 245 (Feb. 22, 2012) (47 U.S.C. 923(g)–(i), 928).

I. Introduction

To maintain America's leadership in technological innovation and promote economic growth, President Obama unveiled an initiative (Spectrum Initiative) in 2010 to reform spectrum policy and improve America's wireless infrastructure.[1] The broad vision outlined in the President's Spectrum Initiative is to attract public and private sector investment in emerging wireless broadband services and to promote the more efficient use of spectrum. One of the key themes of the President's Spectrum Initiative is the need for the U.S. Government to develop new tools and provide new incentives to free up spectrum from both Federal Government users and non-Federal licensees.[2] To that end, the Administration supported much-needed changes to the Commercial Spectrum

[1] Presidential Memorandum: Unleashing the Wireless Broadband Revolution, 75 FR 38387 (June 28, 2010), *available at http://www.whitehouse.gov/the-press-office/presidential-memorandum-unleashing-wireless-broadband-revolution.*

[2] *Id.; see* Plan and Timetable to Make Available 500 Megahertz of Spectrum for Wireless Broadband (Ten-Year Plan) at 16–17 (Oct. 29, 2010), *available at http://www.ntia.doc.gov/files/ntia/publications/tenyearplan_11152010.pdf.*

Enhancement Act (CSEA) to provide additional incentives for Federal users.[3]

Consistent with this goal, the Middle Class Tax Relief and Job Creation Act of 2012 (Tax Relief Act) amended the CSEA to expand the types of costs for which Federal agencies can be reimbursed from the Spectrum Relocation Fund (Fund).[4] Among other things, the changes made by the Tax Relief Act now permit Federal agencies to receive funds for costs associated with the planning for Federal Communications Commission (FCC) auctions and relocations, spectrum sharing, the use of alternative technologies, the replacement of existing government-owned equipment with state-of-the-art systems, and the research, engineering studies and economic analyses conducted in connection with spectrum sharing arrangements, including coordination with auction winners.[5] Other improvements in the new law are aimed at facilitating better transparency, coordination, and predictability for bidders in FCC spectrum auctions and the ultimate winners of those auctions through, for example, a new requirement that NTIA publish agencies' spectrum transition plans on NTIA's Web site at least 120 days before the commencement of the corresponding FCC auction, with the exception of classified information.[6]

Most pertinent to the purpose of this Notice, the Tax Relief Act: (1) Specified the content of transition plans, following a ''common format,'' for Federal agencies seeking compensation from the Fund for their spectrum relocation or sharing costs, including pre-auction costs; (2) established a mechanism to review the sufficiency of such plans by an expert Technical Panel; and (3) created a dispute resolution process through which any disagreements that may arise over the execution, timing, or cost of transition plans can be resolved within 30 days after the request was made to NTIA.[7] This action proposes regulations to govern the operation of the Technical Panel established by the Tax Relief Act and the workings of any dispute resolution boards that would be called on to adjudicate disputes, should any arise, between non-Federal users and Federal entities during the transition period.

II. Background

In connection with the new agency transition plans required by the Tax Relief Act, new deadlines tied to the FCC's auction start date are imposed upon Federal agencies anticipating transfers from the Fund, upon NTIA, and upon the new Technical Panel. These new, pre-auction deadlines include the following:

(1) Federal entities authorized to use eligible frequencies must submit a transition plan ''for the implementation by such entity of the relocation or sharing arrangement'' to NTIA and the Technical Panel no later than 240 days (*i.e.,* eight months) prior to the auction start date[8];

(2) The Technical Panel must submit to NTIA and to the applying Federal entity a report on the sufficiency of the transition plan no later than 30 days after the submission of the plan (*i.e.,* seven months, or 210 days, prior to the auction start date)[9]; and

(3) NTIA must make the transition plans publicly available on its Web site, with the exception of classified information, no later than 120 days (*i.e.,* four months) before the auction start date.[10]

In Section III.B. below, NTIA addresses the impact on these deadlines in the event the Technical Panel determines that an agency's transition plan is ''insufficient.''

Each agency transition plan must include the information called for by paragraph (h)(2) of section 113 of the NTIA Organization Act, as well as other related provisions.[11] In particular, each plan must contain basic operational and technical data, including: (1) The current use by the Federal entity of the eligible frequencies to be auctioned; (2) the geographic location of the Federal entity's facilities or systems; and (3) the frequency bands used by such facilities or systems.[12] The plan must also set forth the ''steps to be taken by the Federal entity to relocate its spectrum use from such frequencies or to share such frequencies, including timelines for specific geographic locations in sufficient detail to indicate when use of such frequencies at such locations will be discontinued by the Federal entity or shared between the Federal entity and non-Federal users.''[13] It will provide the name of the officer or employee from each agency who is responsible for relocation or sharing efforts and who is authorized to meet and negotiate with non-Federal users regarding the transition.[14]

In addition, each transition plan must describe the agency's specific plans and timelines for using the amounts from the Fund for procuring, testing, and deploying new equipment and for covering the broad range of other allowable relocation or sharing costs to be incurred to achieve ''comparable capability of systems as before the relocation or sharing arrangement.''[15] The plan must also identify any factors that could ''hinder fulfillment of the transition plan,''[16] such as the extent to which any classified information will affect ''the implementation of the relocation or sharing arrangement.''[17]

For any Federal entity seeking payments for certain pre-auction costs, its transition plan must also provide for sharing, coordination, and reasonable accommodations for the use of eligible frequencies by non-Federal users during the transition period.[18] A plan identifying pre-auction costs must also provide that (1) the eligible Federal entity will, during the transition period, make itself available for negotiation and

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[3] Commercial Spectrum Enhancement Act (CSEA), Public Law 108–494, sections 201–209, 118 Stat. 3986 (codified at 47 U.S.C. 923, 928). The CSEA amended the NTIA Organization Act to provide, among other things, for the costs associated with relocation of Federal agencies' spectrum-dependent operations to be reimbursed from the proceeds of spectrum auctions held by the Federal Communications Commission (FCC).

[4] Middle Class Tax Relief and Jobs Creation Act of 2012 (Tax Relief Act), Public Law 112–96, sections 6701–6703, 126 Stat. 245 (Feb. 22, 2012) (amending, among other provisions, sections 113(g)–(i) and 118 of the NTIA Organization Act). Statutory references hereinafter will refer to sections of the NTIA Organization Act, 47 U.S.C. 901 *et seq.,* also referred to generally as ''the statute,'' unless otherwise indicated.

[5] *See* NTIA Organization Act section 113(g)(3) (defining the relocation or sharing costs permitted).

[6] *See id.* at section 113(h)(5)–(6).

[7] *See id.* at sections 113(h)(2), (h)(3), (i), 118(d)(3). Another new provision NTIA is implementing separately relates to the consideration and protection of classified and other sensitive information contained in agency transition plans. *See id.* at section 113(h)(7).

[8] *Id.* at section 113(h)(1).

[9] *Id.* at section 113(h)(4)(A).

[10] *Id.* at section 113(h)(5).

[11] *Id.* at section 113(h)(2); *see also id.* at section 118(d)(3)(B)(ii).

[12] *Id.* at section 113(h)(2)(A)–(C).

[13] *Id.* at section 113(h)(2)(D).

[14] *Id.* at section 113(h)(2)(F).

[15] *Id.* at section 113(h)(2)(G), (g)(3). Under the statute, ''comparable capability of systems'' may be achieved by several means, including but not limited to the following: (1) Relocation of a Federal Government station to a new frequency assignment or to a different geographic location; (2) modification of equipment to mitigate interference or use less spectrum to enable spectrum sharing among Federal entities; and (3) utilizing ''alternative technology'' and ''state-of-the-art replacement systems intended to meet comparable operational scope, which may include incidental increases in functionality.'' *Id.* at section 113(g)(3)(B).

[16] *Id.* at section 113(h)(2)(H).

[17] *Id.* at § 113(h)(7)(A).

[18] *Id.* at section 118(d)(3)(B)(ii)(I). The ''transition period'' under this clause refers to the period over which the Federal entity is ''relocating its spectrum uses.'' *Id.* These qualified pre-auction costs include research, engineering studies, economic analyses or other planning expenses. *Id.* at section 113(g)(3)(A)(iii).

discussion with non-Federal users; and that (2) the eligible Federal entity will assist the non-Federal user during the transition period by making available relevant classified information to those with appropriate security clearances.[19]

III. Discussion

Pursuant to new paragraphs (h)(3)(D) and (i)(8) of section 113 of the NTIA Organization Act, NTIA seeks comment on these proposed regulations. These proposed regulations would govern the operation of the Technical Panel established by the Tax Relief Act and the workings of any dispute resolution boards. NTIA's implementation of the relevant stipulations of the CSEA, as amended by the Tax Relief Act, is aimed at ensuring that (1) NTIA can reliably and accurately compile and report estimated relocation costs and timelines; (2) agencies are adequately compensated for all qualified costs and incentivized to plan accordingly; and (3) to provide as much clarity as possible in the transition plans so prospective and winning bidders can depend on the available information to reduce risk and uncertainty at FCC auctions and when licensees are deploying new systems or leasing the spectrum while ensuring that Federal agencies are given the necessary time to transition as not to compromise their critical operations.

NTIA proposes to restore Part 301 of its regulations, which is currently reserved, in Chapter III of the Code of Federal Regulations (CFR).[20] The proposed rules are organized into three subparts. Subpart A would set forth the overall purpose for the new regulations, include a cross-reference for informational purposes, and define certain terminology used throughout the regulation. Subpart B would contain the regulations governing the operations of the Technical Panel established by the Tax Relief Act. Finally, Subpart C would provide a basic framework under which fair and rapid resolution of any disputes may take place.

A. Purpose, Cross-Reference to NTIA Manual and Definitions

Subpart A of the proposed rules would state that the purpose of Part 301 is to implement the particular statutory provisions that mandate the adoption of such regulations, after public notice and comment, including the regulations proposed herein governing Technical Panels and dispute resolution boards. This subpart would also include a cross-reference to § 300.1 of NTIA's current rules, which in turn incorporates by reference the ''Manual of Regulations and Procedures for Federal Radio Frequency Management,'' also known as the ''NTIA Manual'' or the ''Redbook.'' The NTIA Manual governs the Federal agencies' use of the radio frequency spectrum and NTIA's regulation thereof pursuant to the NTIA Organization Act.[21] This cross-reference is intended for informational purposes because the NTIA Manual applies only to Federal agencies.

NTIA, in consultation with the Interdepartment Radio Advisory Committee (IRAC) and the Policy and Plans Steering Group (PPSG), is revising Annex O of the NTIA Manual to implement the changes to the CSEA from the Tax Relief Act.[22] The revisions to Annex O will implement, for example, the relevant provisions related to the contents of agency transition plans, and the publication and protection thereof.[23] Annex O will specify the procedures and required content for agency Transition Plans based on the new statutory provisions so that the agencies will provide all relevant information and that information will be available to stakeholders according to the statutory requirements and timelines. As with the regulations proposed in this Notice, NTIA's objective in updating Annex O is to make sure that the information requested and provided is accurate and sufficient so that estimated costs and timelines will reduce risk and uncertainty throughout the auction and transition process while ensuring that Federal agencies' mission operations are not interrupted or otherwise adversely impacted during the transition.

Section 301.20 of the regulations would include certain terminology used throughout Part 301. Most of the proposed definitions reflect the terminology in applicable statutory provisions. Slight nomenclature adjustments would be made for purposes of clarification or context. Additional proposed definitions are provided to give further clarity to the regulations in the other subparts. Where necessary, these terms are discussed below in connection with the particular rules in which they are used.

B. Technical Panel

Overview. Subpart B of the proposed regulations would govern the operations of the Technical Panel established by the Tax Relief Act. Specifically, pursuant to the statute, these regulations would cover matters related to the membership, organization, and basic functions of the standing three-member panel.

Membership. As required by the new law, the respective agency heads of NTIA, the FCC, and the Office of Management and Budget (OMB) will appoint the initial members of the Technical Panel not later than August 20, 2012.[24] Each member serves a non-consecutive, 18-month term.[25] The members must be either ''radio engineer[s]'' or ''technical expert[s].''[26]

NTIA proposes that the Assistant Secretary, in consultation with the OMB Director and the FCC Chairman, have the discretion to require additional qualifications for one or more members of the Technical Panel to ensure their timely appointment, committed service, and efficient dispatch of business. For example, depending on the nature of the Federal systems likely to be subject of agency transition plans, NTIA may require that the members have appropriate and up-to-date security clearances to enable access to any classified or sensitive information. In addition, NTIA proposes that the initial members of the panel, as well as subsequent members, be Federal

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[19] *Id.* at section 118(d)(3)(B)(ii)(II)–(III).

[20] NTIA promulgated a previous version of Part 301 in 2002, which governed the reimbursement to Federal entities by the private sector as a result of reallocation of Federal spectrum bands. *See* Mandatory Reimbursement Rules for Frequency Band or Geographic Relocation of Federal Spectrum-Dependent Systems, 67 FR 41182 (June 17, 2002); *see* Repeal of Mandatory Reimbursement Rules for Frequency Band or Geographic Relocation of Federal Spectrum-Dependent Systems, 70 FR 6776 (Feb. 9, 2005).

[21] *See* 47 CFR 300.1 (2011); *see also* NTIA Organization Act § 102(b)(2)(A) (47 U.S.C. 902(b)(2)(A)). The NTIA Manual is the compilation of policies and procedures that govern the use of the radio frequency spectrum by the U.S. Government. Federal government agencies are required to follow these policies and procedures in their use of the spectrum. The NTIA Manual is available online at *http://www.ntia.doc.gov/osmhome/redbook/redbook.html.*

[22] The IRAC assists NTIA in assigning frequencies to U.S. Government radio stations and in developing and executing policies, programs, procedures, and technical criteria pertaining to the allocation, management, and use of the spectrum. It is made up of representatives appointed by their respective Federal departments and agencies. *See http://www.ntia.doc.gov/category/irac.* The PPSG is a high-level interagency group of senior Federal officials that was established to help NTIA resolve major spectrum policy issues that affect the use of spectrum by Federal and non-Federal users. *See* Ten-Year Plan, *supra* note 2 at Appendix A.

[23] *See* NTIA Organization Act at section 113(h)(2), (5), (7); *see also id.* at section 118(d)(3)(B)(ii) (stating additional information that must be in transition plans if Federal entity seeks transfers for pre-auction costs).

[24] *Id.* at section 113(h)(3)(B)(iii).

[25] *Id.* at section 113(h)(3)(B)(iv).

[26] *Id.* at section 113(h)(3)(B)(ii). Technical Panel members may not receive any additional compensation for service on the Technical Panel. *Id.* at section 113(h)(3)(B)(vi). If any member is also an employee of one of the respective appointing agencies, his or her regular compensation in that capacity is not considered compensation for service on the Technical Panel. *Id.*

employees, but not necessarily be employed by the appointing agency.[27] The Chair of the Technical Panel would be the member appointed by the Assistant Secretary. NTIA seeks comment on these proposals.

Review of Transition Plans. The primary role of the Technical Panel is to review each Federal agency's transition plan and to deliver a report on its sufficiency to NTIA and the agency. As noted above, the panel's reports must be submitted within 30 days after an agency submits its plan. This statutory time frame provides a relatively short period for the panel to conduct its assessment. The deadline could present greater challenges if multiple Federal agencies are submitting transition plans covering multiple Federal systems at the same time. Accordingly, NTIA proposes measures in the regulations that would help meet the objectives set forth above while ensuring the timely and successful review of these plans. For example, NTIA seeks comment on whether the rules should confine the scope and content of the Technical Panel's initial report (and, if necessary, subsequent reports) to those assessments and findings most relevant to NTIA's ability to compile estimated relocation costs and timelines for purposes of the notifications required under the CSEA. As discussed next, these and other measures intended to assist in the preparation of the agency transition plans are necessary to avoid the potential procedural dilemma presented when the Technical Panel concludes that a plan is not sufficient.

Meeting the pre-auction milestones set forth above assumes that (1) the Technical Panel finds that the initial transition plan is sufficient within 30 days; and (2) NTIA can reliably compile the estimated relocation and sharing costs and timelines for the notifications at the six-month point before an auction start date. However, under the statute, if the Technical Panel finds the plan insufficient, the applying Federal entity has up to 90 days to submit to the Technical Panel a revised plan.[28] In turn, the Technical Panel would have another 30 days in which to determine whether the revised plan is sufficient.[29] This additional 120-day (*i.e.,* four-month) process following an ''insufficient'' plan could mean that such a plan's estimated costs and timelines may not be available or reliable enough to be included in the notifications to the FCC, Congress, and the Government Accountability Office, which are otherwise due approximately 30 days (*i.e.,* one month) after the Technical Panel report on the initial transition plan is due to NTIA. Moreover, inasmuch as this additional time would potentially result in a revised plan being resubmitted to the Technical Panel four months before the auction start date, NTIA may not be able to publish the plan on its web site by the 120-day deadline set forth in the new law.[30]

Under the circumstances discussed above in which the delay presented by the insufficient transition plan potentially puts at risk NTIA's ability to meet the two deadlines leading up to the FCC's auction start date, NTIA and the FCC could consider any number of options. Under one option, NTIA would provide the FCC a timely notification of the estimated costs and timelines on behalf of the Federal entities by submitting the information compiled from sufficient transition plans, but noting that information from insufficient plans are excluded. Alternatively, if an insufficiency finding would not substantially impact or impair the reliability and accuracy of NTIA's compilation of agency costs and timelines, then NTIA could still provide a timely notification with information from insufficient plans included. NTIA seeks comment on these options.

Another option for dealing with this dilemma, especially if the panel's insufficiency finding would reduce the reliability of the estimated costs and timelines, is for NTIA to recommend that the FCC delay the auction start date until the agency can submit, and the Technical Panel can review, a revised transition plan. However, this alternative may not be feasible, especially in light of the statutory deadlines related to the auctions and licensing for particular spectrum bands identified in Subtitle D of the Tax Relief Act.[31] NTIA intends to provide guidance to the Federal agencies in the revised Annex O of the NTIA Manual and through other assistance to help ensure that each initial plan is complete and contains ''reasonable'' timelines and estimated relocation or sharing costs. Although NTIA will be seeking public input on ''a common format for all Federal entities to follow in preparing transition plans'' in accordance with the new law, NTIA seeks comment on further steps that would help in ensuring the proper regulations are in place to govern the Technical Panel.[32]

Technical Assistance to Dispute Resolution Boards. Finally, the new law requires the Technical Panel to furnish technical assistance to a dispute resolution board convened to resolve disputes among Federal and non-Federal parties. The proposed regulations would require that the Technical Panel provide such assistance upon request of any board convened pursuant to Subpart C of the regulations. NTIA notes, however, that circumstances may arise where effective implementation of the statute and resource constraints may result in the overlap among the current or former membership of the Technical Panel and a dispute resolution board. While NTIA proposes to restrict membership eligibility for dispute resolution boards in certain overlap situations, NTIA does not believe it is necessary to prevent any otherwise qualified person from serving on the Technical Panel. NTIA seeks comment on these proposals.

C. Dispute Resolution Boards

Overview. Subpart C of the proposed regulations would govern workings of any dispute resolution boards upon which parties would call to facilitate the resolution of disputes, should any arise, between non-Federal users and Federal entities during the transition period regarding the ''execution, timing, or cost'' of the Federal entity's transition plan. Pursuant to the new law, these regulations would cover matters related to the workings of a board, including the content of any request to establish a board, the associated procedures for convening it, and the dispute resolution process itself.

Membership of a dispute resolution board shall be comprised of a representative of OMB, NTIA, and the

[27] If a member is employed by another agency, this individual would not likely be able to review the transition plans submitted by his or her own agency unless the heads of the other appointing agencies have no objections. *See infra* Section III.C. for a discussion of potential restrictions on membership eligibility for dispute resolution boards in certain situations involving current and former Technical Panel members.

[28] NTIA Organization Act section 113(h)(4)(B).

[29] *Id.* (stating that ''[s]uch revised plan shall be treated as a plan submitted under paragraph (1),'' which suggests that the Technical Panel's 30-day deadline in subparagraph (4)(A) of section 113(j)(h) would apply again pursuant to the similar cross-reference to ''the submission of the plan under paragraph (1)'').

[30] The new law does not specify whether NTIA must make available on the its Web site only a transition plan that is found sufficient by the Technical Panel. *See id.* at section 113(h)(5).

[31] Tax Relief Act section 6401(a)–(b).

[32] In addition to compiling estimated costs and timelines, NTIA expects that the transition plans' contents will provide valuable information to prospective bidders preparing for an auction, to winning bidders planning for their system deployments or leasing strategies, to NTIA in making its findings related to ''comparable capability'' under section 113(g)(6) of the statute, and to OMB in determining the ''appropriateness'' of the costs and timelines pursuant to section 118(d)(2)(B) of the statute.

FCC, each appointed by the head of his or her respective agency.[33] According to the new law, the OMB representative serves as the Chair of any board.[34] With respect to the resolution of any such disputes that may arise, the statute (and the proposed rules) require a board to ''meet simultaneously with representatives of the Federal entity and the non-Federal user to discuss the dispute.'' [35] A board is required to rule on the dispute within 30 days after a party has requested NTIA to convene a board.[36]

In light of the tight statutory deadline for resolving any disputes, as well as NTIA's general obligation to ensure timely relocations and implementation of sharing arrangements, NTIA proposes a streamlined, practical approach to process legitimate dispute resolution requests, to set up dispute resolution boards, and to facilitate the resolution of any dispute as quickly as possible.

Eligibility. As noted above, the statute provides that either a ''Federal entity'' or a ''non-Federal user'' engaged in a dispute over the Federal entity's Transition Plan may request the establishment of a dispute resolution board. NTIA proposes to define these terms in the regulations. Section 113(*l*) of the NTIA Organization Act already defines the term ''Federal entity'' as any ''department, agency, or other instrumentality of the Federal Government that utilizes a Government station license obtained under section 305 of the [Communications Act of 1934, as amended (47 U.S.C. 305)].'' [37] NTIA's proposed regulation incorporates that definition. However, there is no statutory definition of ''non-Federal user.'' NTIA proposes to define this term as ''a Commission licensee authorized to use eligible frequencies or a winning bidder in a Commission auction for eligible frequencies that has fulfilled the Commission's requirements for filing a long-form license application and remitting its final bid payment.''

For both non-Federal and Federal requests, the proposed rules would require that the requests explain how the dispute pertains to the execution, timing, or cost of the Federal entity's particular transition plan that is associated with the non-Federal user's new license(s) won at auction or authorization to use eligible frequencies. For any non-Federal party bringing a dispute, NTIA proposes that its request clearly demonstrate, at a minimum, that the entity is a winning bidder at an FCC auction involving the frequencies at issue in the dispute. NTIA notes that the FCC announces a list of winning bidders via a Public Notice subsequent to the end of each FCC auction. Accordingly, a self-certification from the non-Federal entity is sufficient. NTIA seeks comment on these proposals.

Informal and Alternative Dispute Resolution Efforts. The statute's 30-day deadline for responding to formal dispute resolution requests will likely impact a board's ability to convene, meet with the parties, and adequately address complex cases. At the same time, however, the statute encourages cooperation to assure timely transitions between Federal and non-Federal use of the spectrum. For example, the transition plans to be reviewed by the Technical Panel and published by NTIA on its Web site will set forth ''[t]he name of the officer or employee of the Federal entity who is responsible for the relocation or sharing efforts of the entity and who is authorized to meet and negotiate with non-Federal users regarding the transition.'' [38] In addition, where pre-auction costs are involved, the plans must provide that the Federal entity ''will, during the transition period, make itself available for negotiation and discussion with non-Federal users not later than 30 days after a written request therefor'' and ''make available to a non-Federal user with appropriate security clearances any classified information * * * , on a need-to-know basis, to assist the non-Federal user in the [transition] process with such eligible Federal entity or other eligible Federal entities.'' [39]

Given the incentives created by the new law, NTIA expects only a minimal number of serious conflicts to arise, if any. If such differences do surface, however, NTIA expects the parties to make good faith efforts to solve these problems.[40] Accordingly, NTIA proposes that any disputes arising out of the execution, timing, or cost of a transition plan must be raised, in the first instance, with the officers or employees of the other party identified as being responsible for relocation or sharing efforts and who are authorized to meet and negotiate regarding the transition. NTIA further proposes that any such request must include a summary of the parties' prior efforts and attempts to resolve the dispute. NTIA seeks comment on these proposals.

Other Contents of Dispute Resolution Requests. NTIA also proposes that dispute resolution requests provide sufficient information to enable a fair and timely decision by a dispute resolution board. This information would include, for example, a concise and specific statement of the factual allegations sufficient to support the relief or action requested. The requests would also include the requestor's contact information and a certificate of service showing to whom and when an identical copy of the request was provided to the other entity. Finally, NTIA also believes that it would further expedite resolution of the matter if the requester provides a meeting proposal, setting forth a proposed date, time, and place (including suggested alternatives) for a meeting with the other party and the board, if established, and has proposed requiring meeting proposals be part of the requests. NTIA seeks comment on these proposals as well as the other provisions set forth in § 301.200 of the proposed rules.

Establishment of the Dispute Resolution Board. The accelerated deadlines set forth in the new law require NTIA to establish dispute resolution boards quickly in order to make a recommendation not later than 30 days after the request was made to NTIA. NTIA proposes to create a slate of qualified representatives from each of the respective agencies well in advance of the likely submission of any request to convene a board and to maintain this candidate pool throughout the transition process. NTIA notes that, unlike the Technical Panel members discussed above, the statute does not contain any

[33] NTIA Organization Act section 113(i)(2)(B).

[34] *Id.* at section 113(i)(2)(C). Board members are prohibited from receiving compensation for their service on a board other than their regular compensation as Federal employees. *Id.* at section 113(i)(2)(E).

[35] *Id.* at section 113(i)(3). A board may require the parties to make written submissions to it. *Id.*

[36] *Id.* at section 113(i)(4). A board shall terminate after it rules on the dispute and the time for appeal (30 days) has expired. *Id.* at section 113(i)(2)(F). If a board's decision is appealed, the board will terminate after the appeal process has been exhausted and the board has completed any action required by a court hearing the appeal. *Id.*

[37] *Id.* at section 113(*l*).

[38] *Id.* at section 113(h)(2)(F).

[39] *Id.* at section 118(d)(3)(B)(ii)(III), (IV).

[40] To the extent that such disputes cannot be resolved by the parties on an informal basis or through good faith negotiation, NTIA would strongly encourage the parties to use expedited alternative dispute resolution procedures, such as non-binding arbitration or mediation, before submitting a written request to establish a dispute resolution board. The Administrative Dispute Resolution Act, as amended, was enacted to authorize and encourage the use of alternative means of dispute resolution by Federal agencies. Congress recognized that the use of prompt and informal methods of dispute resolution, such as conciliation, mediation and arbitration, yields significant cost-savings and efficiencies, among other advantages, and results in outcomes that are more stable and less contentious and tailored to meet the particular needs of the parties. See Administrative Dispute Resolution Act, Public Law 101–552, 104 Stat. 2736 (1990), *amended by* Public Law 104–320, 110 Stat. 3870 (1996) (codified at 5 U.S.C. 571 *et seq.* (2011)).

specific qualifications for members of a dispute resolution board. Nevertheless, NTIA proposes that the Assistant Secretary, in consultation with the OMB Director and the FCC Chairman, have the discretion to require certain minimal qualifications for one or more members of a particular dispute resolution panel, or for the slate of representatives generally, to facilitate their timely appointment, effective service, and capable dispute resolution. For example, these qualifications could include certain levels and types of security clearance and expertise. NTIA also proposes that the slate of potential board members be composed of only Federal employees, but notes that an individual representative on each board need not necessarily be employed by the appointing agency.

As discussed above, there may be overlap among the current or former membership of the Technical Panel and a dispute resolution board. NTIA proposes to restrict membership eligibility for boards in certain limited circumstances that present a potential conflict of interest, especially in a dispute involving specific parties where a board member candidate previously served as a member the Technical Panel that reviewed the particular transition plan that is the subject of the dispute. NTIA seeks comment on these proposals.

Dispute Resolution Process and Decision. If and when NTIA receives a formal request to convene a dispute resolution board, it will immediately notify three available members from the slate of eligible representatives from each appointing agency to establish a board. Taking into account the meeting proposal submitted with the request, the Chair of the board (*i.e.,* the OMB representative) will call a meeting of the board to be held, pursuant to the statute, simultaneously with representatives of the parties to the dispute. These meetings may be via teleconference or other electronic means. The board may require the parties to provide any additional written materials and may request technical assistance, as necessary, from the Technical Panel. Although the new law requires the board to rule on the dispute not later than 30 days from the date the request was received, NTIA proposes to permit the parties and board to mutually agree under certain circumstances to extend this period for a specified number of days.

The scope of a dispute resolution request and, consequently, a board's decision, is limited by the statute to matters ''regarding the execution, timing, or cost of the transition plan submitted by the Federal entity.''[41] Consistent with this condition, the proposed rules would require that the board's ruling be based only on the record before it, including any input from the Technical Panel and other material of which it may take official notice. NTIA also seeks comment on whether a board's assessment of the execution, timing, and costs of the plan must be based on a ''reasonableness'' standard similar to the provisions applicable to the Technical Panel's standard of review.[42] Because the new law does not confer independent authority on the board to bind the parties, NTIA proposes that the board's decision take the form of specific written recommendations to NTIA, OMB, the Commission, or the parties, as applicable, to take the suitable steps or remedial actions related to the execution, timing, or cost of the Federal entity's transition plan. Accordingly, NTIA seeks comment on these proposals.

We note that the Act provides that decisions of the dispute resolution board may be appealed to the United States Court of Appeals for the District of Columbia Circuit.[43]

Executive Order 12866

This rule has been determined to be not significant under section 3(f) of Executive Order 12866.

Executive Order 12372

No intergovernmental consultation with State and local officials is required because this rule is not subject to the provisions of Executive Order 12372, Intergovernmental Consultation.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform, as amended by Executive Order 13175. NTIA has determined that the rule meets the applicable standards provided in section 3 of the Executive Order, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13132

This proposed rule does not contain policies having federalism implications requiring preparations of a Federalism Summary Impact Statement.

Executive Order 12630

This proposed rule does not contain policies that have takings implications.

[41] *See* NTIA Organization Act section 113(i)(1).

[42] *See id.* section 113(h)(4)(A).

[43] *Id.* at section 113(i)(7).

Administrative Procedure Act

The Administrative Procedure Act requires NTIA to provide the public with advance notice and an opportunity to comment on all regulations. Generally, the comment period lasts at least thirty days. However, because of the statutory requirement to have implementing regulations in place no later than 180 days after enactment of the Middle Class Tax Relief and Job Creation Act of 2012, NTIA is offering the public a slightly shorter comment period of 15 days. NTIA is committed to allowing public comment, as required by the statute, and the shorter time period should allow sufficient time for review and comment on the regulations while maintaining the Act's schedule.

Regulatory Flexibility Act

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act (RFA) requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of a proposed rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school, district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Under regulations issued by the Small Business Administration (SBA), a determination of a ''small entity'' is based on the number of employees or the annual receipts. The type of entities that would be affected by these proposed regulations would be wireless telecommunications carriers who are winners of an FCC competitive bidding (auction) process. The winners would become licensees of radio frequency spectrum previously assigned to Federal entities. The SBA regulations provide that for a wireless telecommunications carrier to be considered a small entity, it must have 1,500 employees or less.

The proposed regulations outline the operation of a Technical Panel that is charged with reviewing a Federal agency's transition plan regarding the relocation or sharing of frequencies to be auctioned. The regulations also establish a dispute resolution process to resolve any disputes between the incumbent Federal entity and the wireless telecommunications carriers who are winners of an FCC competitive bidding (auction) process, or ''licensee.''

It is difficult to determine the number of small entities that would be impacted by these proposed regulations. Census data for 2007 shows that there were 1,383 wireless telecommunications carriers that operated in that year and that most of those firms would be considered small entities (fewer than 1,500 employees). Thus, a number of small entities may take part in an auction. It is, however, difficult to determine the number of entities that will be successful at an FCC auction that will occur at an undetermined date in the future. There is no way to predict the potential bidders at this time. In fact, entities that are not in existence at this time may participate once the FCC schedules an auction. The regulations proposed by NTIA in this rule would impact only those entities that are successful at an FCC auction. More importantly, the FCC will issue rules regarding the operation of these auctions and could more accurately address the impact that auction rules would have on small entities. The regulations proposed here, on the other hand, only provide guidance regarding the operation of a Technical Panel and a dispute resolution board composed of Federal employees. Even if NTIA could determine the number of small entities that would participate in an FCC auction, these proposed rules would not impose significant costs on those entities.

To the extent that small entities are impacted at all by this proposed rule, it is unlikely that they would suffer any economic harm. To the contrary, these proposed regulations would benefit any entity, large or small. For example, these proposed regulations provide a dispute resolution process which is designed to resolve issues very quickly (30 days) so that licensee's can have timely access to the spectrum. By gaining timely access to spectrum, licensees have certainty with respect to business plans and the deployment of new services.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) does not apply to these proposed regulations because NTIA is not seeking information from 10 or more members of the Public (44 U.S.C. 3502(3), and because administrative proceeding such as the Technical Panel and the Dispute Resolution Board are exempt from the PRA, 44 U.S.C. 3518(c)(1).

Congressional Review Act

This rule has not been determined to be major under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act

Because NTIA has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement is not required.

Government Paperwork Elimination Act

NTIA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Lists of Subjects in 47 CFR Part 301

Administrative practice and procedure, Communications Common Carriers, Communications equipment, Defense communications, Government employees, Satellites, Radio, Telecommunications.

Dated: July 10, 2012.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information Administration.

For the reasons set forth in the preamble, NTIA proposes to amend 47 CFR chapter III by adding part 301 to read as follows:

PART 301—RELOCATION OF AND SPECTRUM SHARING BY FEDERAL GOVERNMENT STATIONS

Subpart A—General Information

Sec.

Subpart B—Technical Panel

Subpart C—Dispute Resolution Boards

Authority: National Telecommunications and Information Administration Organization Act, 47 U.S.C. 901 *et seq.*, as amended by the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, Title VI, Subtitle G, 126 Stat. 245 (February 22, 2012) (47 U.S.C. 923(g)–(i) and 928).

Subpart A—General Information

§ 301.1 Purpose.

Sections 113(g)–(i) and 118 of the National Telecommunications and Information Administration Organization Act (hereinafter ''NTIA Organization Act''), as amended (47 U.S.C. 923(g)–(i) and 928), govern the procedures and requirements related to the relocation of and sharing by eligible Federal radio stations in certain spectrum bands reallocated from Federal to non-Federal use or to shared use. Pursuant to these statutory provisions, Federal entities authorized to use eligible frequencies are entitled to payment from the Spectrum Relocation Fund for their documented relocation or sharing costs incurred as a result of planning for an auction of such frequencies or the reallocation of such frequencies from Federal use to exclusive non-Federal use or to shared use. The purpose of this part is to implement the particular provisions that mandate the adoption of such regulations, after public notice and comment, and that primarily affect non-Federal spectrum users, including the regulations herein governing Technical Panels and Dispute Resolution Boards.

§ 301.10 Cross-reference.

The Manual of Regulations and Procedures for Federal Radio Frequency Management (hereinafter referred to as the ''NTIA Manual'') issued by the Assistant Secretary of Commerce for Communications and Information, is incorporated by reference in § 300.1 of this chapter and available online at *http://www.ntia.doc.gov/osmhome/redbook/redbook.html.* Annex O of the NTIA Manual, as revised, contains information, policies and procedures applicable to Federal agencies that implement the statutory provisions referenced in § 301.1 of this subpart with regard to such agencies that operate authorized U.S. Government stations in eligible frequencies and that incur relocation costs or sharing costs because of planning for an auction or the reallocation of such frequencies from Federal use to exclusive non-Federal use or to shared use. The NTIA Manual applies only to Federal agencies and does not impact the rights or obligations of the public. Accordingly, this cross-reference is for information purposes only.

§ 301.20 Definitions.

Assistant Secretary means the Assistant Secretary of Commerce for Communications and Information.

Auction means the competitive bidding process through which licenses are assigned by the Commission under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

Commission means the Federal Communications Commission.

Dispute Resolution Board means any board established pursuant to section 113(i) of the NTIA Organization Act (47 U.S.C. 923(i)) and subpart C of this part.

Eligible Federal entity means any Federal entity that:

(1) Operates a U.S. Government station authorized to use a band of eligible frequencies; and

(2) That incurs relocation costs or sharing costs because of planning for an auction of spectrum frequencies or the reallocation of spectrum frequencies from Federal use to exclusive non-Federal use or to shared use.

Eligible frequencies means any band of frequencies reallocated from Federal use to non-Federal use or to shared use after January 1, 2003, that is assigned by auction.

Federal entity means any department, agency, or other instrumentality of the U.S. Government that utilizes a Government station assignment obtained under section 305 of the 1934 Act (47 U.S.C. 305).

Non-Federal user means a Commission licensee authorized to use eligible frequencies or a winning bidder in a Commission auction for eligible frequencies that has fulfilled the Commission's requirements for filing a long-form license application and remitting its final bid payment.

NTIA means the National Telecommunications and Information Administration.

NTIA Manual: The Manual of Regulations and Procedures for Federal Radio Frequency Management issued by the Assistant Secretary of Commerce for Communications and Information and incorporated by reference in § 300.1 of this chapter (47 CFR 300.1).

OMB means the Office of Management and Budget.

Technical Panel means the panel established by section 113(h)(3)(A) of the NTIA Organization Act (47 U.S.C. 923(h)(3)(A)) and governed by subpart B of this part.

Transition Plan means the plan submitted by a Federal entity pursuant to subsection 113(h)(1) of the NTIA Organization Act (47 U.S.C. 923(h)(1)).

Subpart B—Technical Panel

§ 301.100 Membership.

(a) *Technical Panel Membership.* The Technical Panel established by section 113(h)(3)(A) of the NTIA Organization Act (47 U.S.C. 923(h)(3)(A)) shall be composed of three (3) members, to be appointed as follows:

(1) One member to be appointed by the Director of OMB;

(2) One member to be appointed by the Assistant Secretary; and

(3) One member to be appointed by the Chairman of the Commission.

(b) *Qualifications.* (1) Each member of the Technical Panel shall be a radio engineer or a technical expert.

(2) The Assistant Secretary, in consultation with OMB and the Chairman of the Commission, may impose additional qualifications for one or more members of the Technical Panel as are necessary pursuant to section 113(g)(6) of the NTIA Organization Act (47 U.S.C. 923(g)(6)), including, but not limited to, the following:

(i) The member must have appropriate and current security clearance to enable access to any classified or sensitive information that may be associated with or relevant to agency Transition Plans; and

(ii) The member must be a Federal employee as defined in 5 U.S.C. 2105(a).

(c) *Term.* The term of a member of the Technical Panel shall be eighteen (18) months, and no individual may serve more than one (1) consecutive term.

(d) *Vacancies.* (1) Any member of the Technical Panel appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term.

(2) A member of the Technical Panel may serve after the expiration of that member's term until a successor has taken office.

(3) A vacancy shall be filled in the manner in which the original appointment was made pursuant to paragraph (a) of this section.

(e) *Compensation.* (1) No member of the Technical Panel shall receive compensation for service on the Technical Panel.

(2) If any member of the Technical Panel is an employee of the agency of the official that appointed such member to the Technical Panel pursuant to paragraph (a) of this section, compensation in the member's capacity as a Federal employee shall not be considered compensation under paragraph (e)(1) of this section.

§ 301.110 Organization and operations.

(a) *Chair.* (1) The member of the Technical Panel appointed by the Assistant Secretary pursuant to § 301.100(a) of this subpart shall be the Chair of the Technical Panel.

(2) The Chair of the Technical Panel may designate a Vice-Chair who may act as Chair in the absence of the Chair.

(b) *Procedures of and actions by the Technical Panel.* (1) The Technical Panel may meet either in person or by some mutually agreeable electronic means to take action on the reports required by § 301.120 of this subpart or in providing technical assistance to a Dispute Resolution Board pursuant to § 301.130 of this subpart.

(2) Meetings of the Technical Panel may be convened as necessary for the efficient and timely dispatch of business by either NTIA or the Chair of the Technical Panel to consider reports and any action thereon and to provide technical assistance to a Dispute Resolution Board pursuant to § 301.130 of this subpart.

(3) The Technical Panel shall endeavour to reach its decisions unanimously. Absent unanimous consent of all three members of the Technical Panel, a concurring vote of a majority of the total panel membership constitutes an action of the Technical Panel.

(4) A majority of the Technical Panel members constitutes a quorum for any purpose.

(5) The Chair of the Technical Panel, in consultation with the other members, may adopt additional policies and procedures to facilitate the efficient and timely dispatch of panel business.

(6) The Technical Panel may consult Federal entity subject matter experts regarding mission risks while assessing the reasonableness of costs and timelines in the Federal entity's Transition Plans.

(c) *Administrative support.* The NTIA shall provide the Technical Panel with the administrative support services necessary to carry out its duties under this part.

§ 301.120 Reports on agency transition plans.

(a) *Deadline for initial report.* Not later than thirty (30) days after the receipt of a Federal entity's Transition Plan submitted in accordance with applicable procedures set forth in Annex O of the NTIA Manual, the Technical Panel shall submit to the NTIA and to such Federal entity the Technical Panel's report on the sufficiency of the Transition Plan.

(b) *Scope and content of initial report.* The Technical Panel's report shall include:

(1) A finding as to whether the Federal entity's Transition Plan includes the information required by the applicable provisions set forth in Annex O of the NTIA Manual;

(2) An assessment of the reasonableness of the proposed timelines contained in the Federal entity's Transition Plan;

(3) An assessment of the reasonableness of the estimated relocation or sharing costs itemized in the Federal entity's Transition Plan, including the costs identified by such plan for any proposed expansion of the capabilities of the Federal entity's system; and

(4) A conclusion, based on the finding and assessments pursuant to paragraphs (b)(1) through (3) of this section, as to the sufficiency of the Transition Plan.

(c) *Insufficient Transition Plan.* In the event the Technical Panel's initial report concludes that the Federal entity's Transition Plan is insufficient pursuant to subsection (b), the report shall also include a description of the specific information or modifications that are necessary for the Federal entity to include in a revised Transition Plan.

(d) *Revised plan.* If the Technical Panel finds the plan insufficient, the applying Federal entity has up to 90 days to submit to the Technical Panel a revised plan.

(e) *Reports on revised agency Transition Plans.* (1) Deadline for Supplemental Report. Not later than thirty (30) days after the receipt of a Federal entity's revised Transition Plan submitted after an initial or revised plan was found by the Technical Panel to be insufficient pursuant to paragraph (c) of this section, the Technical Panel shall submit to the NTIA and to such Federal entity the Panel's supplemental report on the sufficiency of the revised Transition Plan.

(2) Scope and content of supplemental report. The Technical Panel's supplemental report on the revised Transition Plan shall include:

(i) A finding as to whether the Federal entity's revised Transition Plan includes the necessary information or modifications identified in the Technical Panel's initial report pursuant to paragraph (b)(1) of this section;

(ii) A reassessment, if required, of the reasonableness of the proposed timelines contained in the Federal entity's revised Transition Plan;

(iii) A reassessment, if required, of the reasonableness of the estimated relocation or sharing costs itemized in the Federal entity's revised Transition Plan; and

(iv) A conclusion, based on the finding and reassessments pursuant to paragraphs (e)(2)(i) through (iii) of this section, as to the sufficiency of the revised Transition Plan.

§ 301.130 Technical assistance to Dispute Resolution Panels.

Upon request of a Dispute Resolution Board convened pursuant to subpart C of this part, the Technical Panel shall provide the board with such technical assistance as requested.

Subpart C—Dispute Resolution Boards.

§ 301.200 Requests to resolve disputes.

(a) *Non-Federal user requests.* (1) In general. An eligible non-Federal user may submit a written request to the NTIA in accordance with this subsection to establish a Dispute Resolution Board to resolve an actual, unresolved dispute that has arisen between the non-Federal user and one or more Federal entities regarding the execution, timing, or cost of the Transition Plan (or Plans) submitted by the Federal entity (or entities) pursuant to section 113(h)(1) of the NTIA Organization Act, as amended (47 U.S.C. 923(h)(1)).

(2) *Negotiation, mediation and arbitration.* Disputes arising out of the execution, timing, or cost of the Transition Plan (or Plans) submitted by the Federal entity (or entities) must be raised, in the first instance, with the officers or employees of the Federal entities identified in the Transition Plans as being responsible for the relocation or sharing efforts of the entities and who are authorized to meet and negotiate with non-Federal users regarding the transition. To the extent that such disputes cannot be resolved by the parties on an informal basis or through good faith negotiation, they are strongly encouraged to use expedited alternative dispute resolution procedures, such as arbitration or mediation, before submitting a written request in accordance with this subsection to establish a board.

(3) *Eligibility to request the establishment of a board.* To submit a request to establish a board, a non-Federal user, as such term is defined in § 301.20 of this part, must be a winning bidder at an FCC auction for the eligible frequencies and the dispute must pertain to the execution, timing, or cost of the Transition Plan (or Plans) associated with the license (or licenses) subject to the winning bid (or bids).

(4) Contents of request. In order to be considered by a board under this subpart, a request must include:

(i) Specific allegations of fact sufficient to support the relief or action requested. Such allegations of fact, except for those of which official notice may be taken by the board, shall be supported by affidavits of a person or persons having personal knowledge thereof;

(ii) A summary of the parties' prior efforts and attempts to resolve the dispute pursuant to paragraph (a)(2) of this section and a description of the reasons, factors and other conditions that led to the inability of such efforts and attempts to resolve the dispute;

(iii) A detailed description of each of the claims upon which a resolution is sought by and available to the non-Federal user;

(iv) A detailed description of the requested action, remedy or relief sought;

(v) The requestor's contact information and a certificate of service showing to whom and when an identical copy of the request was provided to the Federal entity; and

(vi) A meeting proposal setting forth the proposed date, time and place (including suggested alternatives) for a meeting with the Federal entity and the board, the date for which shall be no later than fifteen (15) days from the date the request is received by NTIA.

(vii) A self-certification that the Federal entity is a winning bidder in an FCC auction pertaining to the incumbent Federal entity's radio-frequency spectrum.

(5) *Federal entity response.* A Federal entity has the right to submit a response to the board prior to the date of the scheduled meeting. If so directed by the Chair of the board, the Federal entity shall submit a written response to the non-Federal user's request.

(b) *Federal entity requests.* (1) *In general.* An eligible Federal entity may submit a written request in accordance with this subsection and Annex O of the NTIA manual to establish a Dispute Resolution Board to resolve an actual dispute that has arisen between the Federal entity and a non-Federal user regarding the execution, timing, or cost of the Transition Plan submitted by the Federal entity pursuant to section

113(h)(1) of the NTIA Organization Act, as amended (47 U.S.C. 923(h)(1)).

(2) *Eligibility to request the establishment of a board.* To submit a request to establish a board, a Federal entity, as such term is defined in § 301.20 of this part, must have submitted a Transition Plan pursuant to section 113(h)(1) of the NTIA Organization Act (47 U.S.C. 923(h)(1)) and the dispute must pertain to the execution, timing, or cost of such plan in connection with the non-Federal user's license (or licenses) to use the eligible frequencies.

(3) Contents of request. In order to be considered by a board under this subpart, a request must include:

(i) Specific allegations of fact sufficient to support the relief or action requested. Such allegations of fact, except for those for which official notice may be taken by the board, shall be supported by affidavits of a person or persons having personal knowledge thereof;

(ii) A summary of the parties' prior efforts and attempts to resolve the dispute;

(iii) A detailed description of each of the claims upon which a resolution is sought by and available to the Federal entity;

(iv) A detailed description of the requested action, remedy or relief to be granted by the board;

(v) The requestor's contact information and a certificate of service showing to whom and when an identical copy of the request was provided to the non-Federal user; and

(vi) A meeting proposal setting forth the proposed date, time and place (including suggested alternatives) for a meeting with the non-Federal user and the board, the date for which shall be no later than fifteen (15) days from the date the request is received by NTIA.

(4) *Non-Federal user response.* A non-Federal user has the right to submit a response to the board prior to the date of the scheduled meeting. If so directed by the Chair of the board, the non-Federal user shall submit a written response to the Federal entity's request.

§ 301.210 Establishment and operation of a Dispute Resolution Board.

(a) *In general.* If the NTIA receives a written request under § 301.200, it shall establish a Dispute Resolution Board in accordance with this section.

(b) *Board membership.* A board established under this section shall be composed of three (3) members, to be appointed as follows:

(1) A representative of OMB, to be appointed by the Director of OMB;

(2) A representative of the NTIA, to be appointed by the Assistant Secretary; and

(3) A representative of the Commission, to be appointed by the Chairman of the Commission.

(c) *Qualifications.* The Assistant Secretary, in consultation with the Director of OMB and the Chairman of the Commission, may impose qualifications for one or more members of a board established under this section as are necessary pursuant to section 113(g)(6) of the NTIA Organization Act (47 U.S.C. 923(g)(6)), including, but not limited to, the following:

(1) The member has an appropriate and current security clearance to enable access to any classified or sensitive information that may be associated with or relevant to the Transition Plan subject to dispute;

(2) The member must be an employee of the appointing agency;

(3) The member must be from a predetermined slate of not less than three (3) qualified candidates from NTIA, OMB and the Commission and able to serve on a board immediately upon the notification of the establishment of a board under this section until it rules on the dispute that it was established to resolve; and

(4) The member may not simultaneously be a member of the Technical Panel governed by subpart B of this part or a former member of the Technical Panel that reviewed the Transition Plan subject to dispute.

(d) *Chair.* (1) The representative of OMB shall be the Chair of any board established under paragraph (a) of this section.

(2) The Chair may designate a Vice-Chair who may act as Chair in the absence of the Chair.

(e) *Term.* The term of a member of a board shall be until such board is terminated pursuant to paragraph (j) of this section or until a successor or replacement member is appointed under paragraph (b) of this section.

(f) *Vacancies.* Any vacancy on a board shall be filled in the manner in which the original appointment was made under paragraph (b) of this section.

(g) *Compensation.* (1) No member of a board shall receive any compensation for service on such board.

(2) Compensation in the member's capacity as an employee of the agency of the official that appointed such member to a board pursuant to paragraph (b) of this section shall not be considered compensation under paragraph (f)(1) of this section.

(h) *Procedures of and actions by a board.* (1) Except with respect to meetings with the parties pursuant to § 301.220(a), a board shall meet at the call of the Chair either in person or by some mutually agreeable electronic means to deliberate or rule on the dispute that it was established to resolve under paragraph (a) of this section or to receive technical assistance from the Technical Panel pursuant to § 301.130 of this part.

(2) A board shall endeavour to rule on the dispute that it was established to resolve under paragraph (a) of this section unanimously. Absent unanimous consent of all three members of a board, a concurring vote of a majority of the total board membership constitutes an action of such board.

(3) A majority of board members constitutes a quorum for any purpose.

(4) The Chair of a board, in consultation with the other members, may adopt additional policies and procedures to facilitate the efficient and timely resolution of the dispute that it was established to resolve under paragraph (a) of this section.

(i) *Administrative support.* The NTIA shall provide any board established pursuant to paragraph (a) of this section with the administrative support services necessary to carry out its duties under this subpart.

(j) *Termination of a board.* (1) A board established pursuant to paragraph (a) of this section shall terminate after it rules on the dispute that it was established to resolve and the time for appeal of its decision under section 113(i)(7) of the NTIA Organization Act has expired, unless such an appeal has been taken.

(2) If such an appeal has been taken, the board shall continue to exist until the appeal process has been exhausted and the board has completed any action required by a court hearing the appeal.

§ 301.220 Dispute resolution.

(a) *Meeting with parties.* In consideration of the proposal set forth in a request pursuant to either § 301.200(a)(4)(vi) or (b)(3)(vi) of or at another mutually convenient date, time and place (including via teleconference or other electronic means), the Chair of the board established under this subpart shall call a meeting of the board to be held simultaneously with representatives of the parties to the dispute to discuss the dispute.

(b) *Additional written submissions.* The parties to the dispute shall provide the board with any additional written materials and documents as it may request.

(c) *Assistance from Technical Panel.* A board established under this Subpart may request technical assistance, as necessary, from the Technical Panel governed by subpart B of this part.

(d) *Deadline for decision.* The board shall rule on the dispute not later than thirty (30) days from the date the request was received by the NTIA, unless the parties and the board all agree in writing, and subject to the approval of the Assistant Secretary, to extend this period for a specified number of days.

(e) *Board decision.* The decision of a board established under this subpart shall be:

(1) In writing;

(2) Limited to matters regarding the reasonableness of the execution, timing, or cost of the Transition Plan submitted by the Federal entity;

(3) Based only on the record before it, including the request, meeting(s) with the parties all at the same time, any additional written submissions requested by the board and served on the other party, input from the Technical Panel, or other matters and material for which it may take official notice;

(4) In the form of a recommendation to NTIA, OMB, the Commission and the parties; and

(5) Non-binding on the parties.

[FR Doc. 2012–17112 Filed 7–16–12; 8:45 am]

BILLING CODE 3510–60–P

Notices

Federal Register
Vol. 77, No. 137
Tuesday, July 17, 2012

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Reporting of Sea Turtle Incidental Take in Virginia Chesapeake Bay Pound Net Operations.

OMB Control Number: 0648–0470.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 27.

Average Hours per Response: 10 minutes.

Burden Hours: 81.

Needs and Uses: This request is for extension of a current information collection.

This action would continue the reporting measure requiring all Virginia Chesapeake Bay pound net fishermen to report interactions with endangered and threatened sea turtles, found both live and dead, in their pound net operations. When a live or dead sea turtle is discovered during a pound net trip, the Virginia pound net fisherman is required to report the incidental take to the National Marine Fisheries Service (NMFS) and, if necessary, the appropriate rehabilitation and stranding network. This information will be used to monitor the level of incidental take in the state-managed Virginia pound net fishery and ensure that the seasonal pound net leader restrictions (50 CFR 223.206(d)(10)) are adequately protecting listed sea turtles. Based on the number of sea turtle takes anticipated in the Virginia pound net fishery and the available number of Virginia pound net fishermen and pound nets, the number of responses anticipated on an annual basis is 483.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: July 11, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–17299 Filed 7–16–12; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502, A–549–502, A–489–501, C–489–502, A–351–809, A–201–805, A–580–809, A–583–814, and A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From India, Thailand, and Turkey; Certain Circular Welded Non-Alloy Steel Pipe From Brazil, Mexico, the Republic of Korea, and Taiwan; and Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) that revocation of the antidumping duty (AD) orders on (1) certain circular welded carbon steel pipes and tubes from India, Thailand, and Turkey; (2) certain circular welded non-alloy steel pipe from Brazil, Mexico, the Republic of Korea, and Taiwan; and (3) certain circular welded carbon steel pipes and tubes from Taiwan would likely lead to continuation or recurrence of dumping, that revocation of the countervailing duty (CVD) order on certain circular welded carbon steel pipes and tubes from Turkey would likely lead to continuation or recurrence of a countervailable subsidy, and the determinations by the International Trade Commission (the ITC) that revocation of these AD and CVD orders would likely lead to a continuation or recurrence of material injury to an industry in the United States, the Department is publishing this notice of the continuation of these AD orders and CVD order.

DATES: Effective July 17, 2012.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Robert James (AD orders) or Eric Greynolds (CVD order), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965, (202) 482–0649, and (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2011, the Department initiated and the ITC instituted sunset reviews of the AD and CVD orders on certain circular welded carbon steel pipes and tubes from India, Thailand, and Turkey, certain circular welded non-alloy steel pipe from Brazil, Mexico, the Republic of Korea, and Taiwan, and certain circular welded carbon steel pipes and tubes from Taiwan pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (the Act), respectively.[1] As a result of its reviews, the Department found that revocation of the AD orders would likely lead to continuation or recurrence of dumping and that revocation of the CVD order would likely lead to continuation or recurrence of subsidization, and notified the ITC of the margins of dumping and the subsidy rates likely to prevail were the orders revoked.[2]

[1] *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 38613 (July 1, 2011).

[2] *See Certain Circular Welded Carbon Steel Pipes and Tubes From India, Thailand, and Turkey; Final Results of Expedited Five-Year (''Sunset'') Reviews of Antidumping Duty Orders,* 76 FR 66893 (October

Continued

On July 5, 2012, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the AD and CVD orders on certain pipe and tube from Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.[3]

Scope of the Orders

The products covered by these AD and CVD orders are identified in the Appendix to this notice.

Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of these AD and CVD orders would likely lead to continuation or recurrence of dumping or a countervailable subsidy, and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD and CVD orders on certain circular welded carbon steel pipes and tubes from India, Thailand, and Turkey, certain circular welded non-alloy steel pipe from Brazil, Mexico, the Republic of Korea, and Taiwan, and certain circular welded carbon steel pipes and tubes from Taiwan.

U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of these orders is the date of publication in the **Federal Register** of this notice of continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these finding/orders not later than 30 days prior to the fifth anniversary of the effective date of the continuation.

These five-year (sunset) reviews and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: July 10, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

APPENDIX

Scope of the Antidumping And Countervailing Duty Orders

India—Welded Carbon Steel Pipe and Tube (A–533–502)

The products covered by the order include certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various American Society for Testing Materials (ASTM) specifications, most notably A–53, A–120, or A–135.

The antidumping duty order on certain welded carbon steel standard pipes and tubes from India, published on May 12, 1986, included standard scope language which used the import classification system as defined by Tariff Schedules of the United States, Annotated (TSUSA). The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). *See, e.g., Certain Welded Carbon Steel Standard Pipes and Tubes From India; Preliminary Results of Antidumping Duty Administrative Reviews,* 56 FR 26650, 26651 (June 10, 1991). As a result of this transition, the scope language we used in the 1991 **Federal Register** notice is slightly different from the scope language of the original final determination and antidumping duty order.

Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.[4]

Thailand—Welded Carbon Steel Pipe and Tube (A–549–502)

The products covered by the order include certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various ASTM specifications, most notably A–53, A–120, or A–135.

The antidumping duty order on certain welded carbon steel standard pipes and tubes from India, published on May 12, 1986, included standard scope language which used the import classification system as defined by TSUSA. The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the TSUSA to the HTS. *See, e.g., Certain Welded Carbon Steel Standard Pipes and Tubes From India; Preliminary Results of Antidumping Duty Administrative Reviews,* 56 FR 26650, 26651 (June 10, 1991). As a result of this transition, the scope language we used in the 1991 **Federal Register** notice is slightly different from the scope language of the original final determination and antidumping duty order.

Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.[5] [6]

Turkey—Welded Carbon Steel Pipe and Tube (A–489–501)

The products covered by this order include circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or galvanized, painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following HTSUS subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although

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28, 2011); *Welded Carbon Steel Pipe and Tube From Turkey: Final Results of Expedited Sunset Review of Countervailing Duty Order,* 76 FR 64900 (October 19, 2011); and *Certain Circular Welded Non-Alloy Steel Pipe From Brazil, Mexico, the Republic of Korea, and Taiwan; and Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Order,* 76 FR 66899 (October 28, 2011) (collectively, *Final Results*).

[3] *See Certain Circular Welded Pipe and Tube From Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey,* 77 FR 39736 (July 5, 2012) and USITC Publication titled *Certain Circular Welded Pipe and Tube From Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey* (Inv. Nos. 701–TA–253 and 731–TA–132, 252, 271, 273, 532–534, and 536 (Third Review), USITC Publication 4333 (June 2012).

[4] *See Certain Welded Carbon Steel Standard Pipes and Tubes From India: Final Results of Antidumping Duty Administrative Review,* 75 FR 69626, 69627 (November 15, 2010).

[5] *See Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 75 FR 64696 (October 20, 2010).

[6] There was one scope ruling in which British Standard light pipe 387/67, Class A–1 was found to be within the scope of the order per remand. *See Scope Rulings,* 58 FR 27542 (May 10, 1993).

the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.[7]

Turkey—Welded Carbon Steel Pipe and Tube (C–489–502)

The products covered by the order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the HTSUS as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.[8]

Brazil, Mexico, and the Republic of Korea—Certain Circular Welded Non-Alloy Steel Pipe (A–351–809, A–201–805, and A–580–809)

The products covered by the orders are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meets ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for farming and support members for reconstruction or load bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in the orders.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of the orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in the orders.

Imports of the products covered by the orders are currently classifiable under the following HTSUS subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 73.06.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the orders is dispositive.[9]

Taiwan—Certain Circular Welded Non-Alloy Steel Pipe (A–583–814)

The products covered by the order are (1) circular welded non-alloy steel pipes and tubes, of circular cross section over 114.3 millimeters (4.5 inches), but not over 406.4 millimeters (16 inches) in outside diameter, with a wall thickness of 1.65 millimeters (0.065 inches) or more, regardless of surface finish (black, galvanized, or painted), or end-finish (plain end, beveled end, threaded, or threaded and coupled); and (2) circular welded non-alloy steel pipes and tubes, of circular cross-section less than 406.4 millimeters (16 inches), with a wall thickness of less than 1.65 millimeters (0.065 inches), regardless of surface finish (black, galvanized, or painted) or end-finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkling systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence-tubing and as structural pipe tubing used for framing and support members for construction, or load-bearing purposes in the construction, shipbuilding, trucking, farm-equipment, and related industries. Unfinished conduit pipe is also included in the order.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of the order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind or used for oil and gas pipelines is also not included in the scope of the order.

Imports of the products covered by the order are currently classifiable under the following HTSUS subheadings, 7306.30.10.00, 7306.30.50.85, 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.[10]

Taiwan—Circular Welded Carbon Steel Pipes and Tubes (A–583–008)

The products covered by the order are certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter, currently classified under HTSUS item numbers 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, and 7306.30.50.55. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.[11]

[FR Doc. 2012–17372 Filed 7–16–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–833]

Stainless Steel Bar From Japan: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from an interested party, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on stainless steel bar from Japan (the Order) covering the period February 1, 2010, through January 31, 2011. The interested party that requested the administrative review has since withdrawn its request. As a result, the Department is rescinding this review.

DATES: *Effective Date:* July 17, 2012.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2012, the Department published a notice of initiation of an administrative review of the Order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, and Deferral of Administrative Review,* 77 FR 19179, 19181 (March 30, 2012). Based on a request for review from Suruga USA Corp. (Suruga), we initiated a review of Misumi Corporation (Misumi). *Id.* No other

[7] *See Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Final Antidumping Duty Administrative Review,* 75 FR 64250, 64251 (October 19, 2010).

[8] *See Certain Welded Carbon Steel Standard Pipe From Turkey: Final Results of Countervailing Duty Administrative Review,* 75 FR 44766 (July 29, 2010).

[9] *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe From Brazil, the Republic of Korea (Korea), Mexico and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe From Korea,* 57 FR 49453 (November 2, 1992); *Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review,* 76 FR 77770 (December 14, 2011); and *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review,* 77 FR 34344 (June 11, 2012).

[10] *See Continuation of Antidumping Duty Orders on Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan and Circular Welded Non-Alloy Steel Pipe From Taiwan,* 71 FR 46447 (August 14, 2006).

[11] *See Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review,* 76 FR 63902 (October 14, 2011).

party requested a review. On June 27, 2012, Suruga timely withdrew its request for a review of the Order with respect to Misumi. *See* Letter from Suruga to the Secretary, ''Stainless Steel Bar—Withdrawal of Request for Administrative Review,'' dated June 27, 2012.

Rescission of Review

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' As explained above, Suruga withdrew its request for a review of the Order with respect to Misumi within the 90-day period articulated in 19 CFR 351.213(d)(1). Therefore, because we received no other requests for review of this company and Suruga withdrew its request within the time limit provided in the regulation, we are rescinding the administrative review of the Order with respect to Misumi in accordance with 19 CFR 351.213(d)(1).

Assessment Rates

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For Misumi, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period February 1, 2010, through January 31, 2011, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions to CBP within 15 days after publication of this notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 11, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–17371 Filed 7–16–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 12–00001]

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review to Panama Poultry Export Quota, Inc. (''PAN–PEQ'') (Application #12–00001).

SUMMARY: On June 25, 2012, the U.S. Department of Commerce issued an Export Trade Certificate of Review to Panama Poultry Export Quota, Inc. (''PAN–PEQ''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2010). The U.S. Department of Commerce, International Trade Administration, Office of Competition and Economic Analysis (''OCEA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the issuance in the **Federal Register**. Under Section 305(a) of the Export Trading Company Act (15 U.S.C. 4012(b)(1)) and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Members (Within the Meaning of 15 CF. 325.2(1))

PAN–PEQ's members under this certificate are the USA Poultry and Egg Export Council (''USAPEEC'') on behalf of the U.S. poultry industry; and the Asociacion Nacional de Avicultores de Panama (''ANAVIP'') on behalf of the Panamanian poultry industry.

Description of Certified Conduct

PAN–PEQ is certified to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets.

Export Trade

Chicken leg quarters (or parts of chicken leg quarters, including legs or thighs), fresh, chilled or frozen seasoned or unseasoned, marinated or not marinated, classifiable under HTS 0207.13.99, 0207.14.99 and 1602.32.00.

Export Markets

Chicken leg quarters for which awards will be made will be exported to the Republic of Panama.

Export Trade Activities and Methods of Operation

With respect to the conduct of Export Trade in the Export Markets, PAN–PEQ may, subject to the terms and conditions set forth below, engage in the following Export Trade Activities and Methods of Operation:

1. *Purpose:* PAN–PEQ will manage on an open tender basis the tariff-rate quotas (TRQs) for poultry products granted by the Republic of Panama to the United States under the terms of the United States-Panama Trade Promotion Agreement or any amended or successor agreement providing for Panamanian poultry TRQs for the United States of America. PAN–PEQ also will provide for distributions of the proceeds received from the tender process to support the operation and administration of PAN–PEQ and for the benefit of the poultry industries in the Republic of Panama and the United States.

2. *Administrator.* PAN–PEQ shall contract with a neutral third party Administrator who is not engaged in the production, sale, distribution or export of poultry or poultry products and who shall bear responsibility for administering the TRQ System, subject to general supervision and oversight by the Board of Directors of PAN–PEQ.

3. *Open Tender Process.* PAN–PEQ shall offer TRQ Certificates for duty-free shipments of chicken leg quarters to the Republic of Panama solely and exclusively through an open tender

process with certificates awarded to the highest bidders (''TRQ Certificates''). PAN–PEQ shall hold tenders in accordance with tranches established in the relevant regulations of the Republic of Panama, or in the absence of such, at least once each year. The award of TRQ Certificates under the open tender process shall be determined solely by the Administrator in accordance with Paragraphs 1 and 8 of the Export Trade Activities and Methods of Operation without any participation by the Board of Directors.

4. *Persons or Entities Eligible to Bid.* Any person or entity incorporated or with a legal address in the United States of America shall be eligible to bid in the open tender process.

5. *Notice.* The Administrator shall publish notice (''Notice'') of each open tender process to be held to award TRQ Certificates in the *Journal of Commerce* and, at the discretion of the Administrator, in other publications of general circulation within the U.S. poultry industry or in the Republic of Panama. The Notice will invite independent bids and will specify (i) the total amount (in metric tons) that will be allocated pursuant to the applicable tender; (ii) the shipment period for which the TRQ Certificates will be valid; and (iii) the date and time by which all bids must be received by the Administrator in order to be considered (the ''Bid Date''); and (iv) a minimum bid amount per ton, as established by the Board of Directors, to ensure the costs of administering the auction are recovered. The Notice normally will be published not later than 30 business days prior to the first day of the shipment period and will specify a Bid Date that is at least 10 business days after the date of publication of the Notice. The Notice will specify the format for bid submissions. Bids must be received by the Administrator not later than 5 p.m. EST on the Bid Date.

6. *Contents of Bid.* The bid shall be in a format established by the Administrator and shall state (i) the name, address, telephone and facsimile numbers, and email address of the bidder; (ii) the quantity of poultry bid, in metric tons or portions of metric tons; (iii) the bid price in U.S. dollars per metric ton; and (iv) the total value of the bid. The bid form shall contain a provision, that must be signed by the bidder, agreeing that (i) any dispute that may arise relating to the bidding process or to the award to TRQ Certificates shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules; and (ii) judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

7. *Performance Security.* The bidder shall submit with each bid a performance bond, irrevocable letter of credit drawn on a U.S. bank, cashier's check, wire transfer or equivalent security, in a form approved and for the benefit of an account designated by the Administrator, in the amount of $50,000 or the total value of the bid, whichever is less. The bidder shall forfeit such performance security if the bidder fails to pay for any TRQ Certificates awarded within five (5) business days. The bidder may chose to apply the performance security to the price of any successful bid, or to retain the performance security for a subsequent open tender process. Promptly after the close of the open tender process, the Administrator shall return any unused or non-forfeited security to the bidder.

8. *Award of TRQ Certificates.* The Administrator shall award TRQ Certificates for the available tonnage to the bidders who have submitted the highest price conforming bids. If two or more bidders have submitted bids with identical prices, the Administrator shall divide the remaining available tonnage in proportion to the quantities of their bids, and offer each TRQ Certificates in the resulting tonnages. If any bidder declines all or part of the tonnage offered, the Administrator shall offer that tonnage first to the other tying bidders, and then to the next highest bidder.

9. *Payment for TRQ Certificates.* Promptly after being notified of a TRQ award and within the time specified in the Notice, the bidder shall pay the full amount of the bid, either by wire transfer or by certified check, to an account designated by the Administrator. If the bidder fails to make payment within five (5) days, the Administrator shall revoke the award and award the tonnage to the next highest bidder(s).

10. *Delivery of TRQ Certificates.* The Administrator shall establish an account for each successful bidder in the amount of tonnage available for TRQ Certificates. Upon request, the Administrator will issue TRQ Certificates in the tonnage designated by the bidder, consistent with the balance in that account. The TRQ Certificate shall state the delivery period for which it is valid.

11. *Transferability.* TRQ Certificates shall be freely transferable except that (i) any TRQ Certificate holder who intends to sell, transfer or assign any rights under that Certificate shall publish such intention on a Web site maintained by the Administrator at least three (3) business days prior to any sale, transfer or assignment; and (ii) any TRQ holder that sells, transfers or assigns its rights under a TRQ Certificate shall provide the Administrator with notice and a copy of the sale, transfer or assignment within three (3) business days.

12. *Deposit of Proceeds:* The Administrator shall cause all proceeds of the open tender process to be deposited in an interest-bearing account in a financial institution approved by the PAN–PEQ Board of Directors.

13. *Disposition of Proceeds.* The proceeds of the open tender process shall be applied and distributed as follows:

A. The Administrator shall pay from tender proceeds, as they become available, all operating expenses of PAN–PEQ, including legal, accounting and administrative costs of establishing and operating the TRQ System, as authorized by the Board of Directors.

B. Of the proceeds remaining at the end of each year of operations after all costs described in (i) above have been paid.

(a) Fifty percent (50%) shall be distributed to fund export market development, educational, scientific and technical projects to benefit the United States poultry industry. PAN–PEQ shall accept proposals for the funding of projects approved by the Board of Directors of USAPEEC. The Administrator shall disburse funds to those projects approved for funding by the PAN–PEQ Board of Directors.

(b) Fifty percent (50%) shall be distributed to fund market development, educational, scientific and technical projects to benefit the poultry industry of the Republic of Panama. PAN–PEQ shall accept proposals for funding of projects approved by the Board of Directors of ANAVIP. The Administrator shall disburse funds to those projects approved for funding by the PAN–PEQ Board of Directors.

14. *Arbitration of Disputes.* Any dispute, controversy or claim arising out of or relating to the TRQ System or the breach thereof, including *inter alia,* a Member's qualification for distribution, interpretation of documents, or of the distribution itself, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

15. *Confidential Information.* The Administrator shall maintain as confidential all bids, their contents,

export documentation, or other business sensitive information submitted in connection with application for PAN–PEQ membership, bidding in the open tender process or requests for distribution of proceeds, where such documents or information has been marked ''Confidential'' by the person making the submission. The Administrator shall disclose any such information only to: (a) An external auditor retained for purposes of auditing auction results and proceeds; (b) an authorized neutral third party, or, (c) an authorized government official of the United States or of the Republic of Panama, and only as necessary to ensure the effective operation of the TRQ System or where required by law (including appropriate disclosure in connection with the arbitration of a dispute). However, after the issuance of all TRQ Certificates from an open tender process, the Administrator shall notify all bidders and shall disclose publicly (i) the total tonnage for which TRQ Certificates were awarded, and (ii) the lowest price per metric ton of all successful bids.

16. Annual Reports. PAN–PEQ shall publish an annual report including a statement of its operating expenses and data on the distribution of proceeds, as reflected in the audited financial statement of the PAN–PEQ TRQ System.

Terms and Conditions

In engaging in Export Trade Activities and Methods of Operation,

1. ''PAN–PEQ'' will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. ''PAN–PEQ'' will ensure that the Administrator holds the auctions in accordance with tranches established in the relevant regulations of the Republic of Panama, or in the absence of such, at least once each year. Failure to so hold auctions may result in revocation of the Certificate.

3. ''PAN–PEQ'' will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definitions

''Neutral third party'', as used in this Certificate of Review, means (a) the Administrator; and (b) any other party that is not otherwise associated with PAN–PEQ or any Member and that is not engaged in the production, distribution, or sale of chicken leg quarters.

''TRQ System'', as used in this Certificate of Review, refers to the conduct of the tender for the product being exported (chicken leg quarters) under the tariff rate quota as agreed to in the United States-Panama Trade Promotion Agreement, and the distributions of the proceeds received from the tender process.

Dated: July 11, 2012.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2012–17301 Filed 7–16–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council (NPFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet in Seattle, WA.

DATES: The meeting will be held on July 30–31, 2012, from 9 a.m. to 5 p.m. Pacific time.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE., Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Steve MacLean, NPFMC, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Foreign nationals wishing to attend this meeting in person should contact the Council as soon as possible to expedite security clearance at the AFSC facility. This public meeting will occur during the scoping period for the Steller Sea Lion Protection Measures EIS (77 FR 22750, April 17, 2012). Information on EIS development, potential alternatives, and issues for analysis may be discussed. The public is encouraged to attend in this meeting, however, comments specific to the EIS should be submitted in writing to NMFS before the close of the scoping period on October 15, 2012. More information on the EIS scoping process and instructions for submitting written public comments are available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov/sustainablefisheries/sslpm/eis/default.htm.*

Additional information is posted on the Council Web site: *http://www.alaskafisheries.noaa.gov/npfmc/.*

The meeting will be webcast to allow the public to watch and hear presentations. Comments will not be accepted via webcast or teleconference.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: July 11, 2012.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–17307 Filed 7–16–12; 8:45 am]

BILLING CODE 3510–22–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 19 July 2012, at 9:00 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington DC 20001–2728. Items of discussion may include buildings, parks, and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *staff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: July 9, 2012 in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2012–17196 Filed 7–16–12; 8:45 am]

BILLING CODE 6331–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed renewal of the AmeriCorps National Civilian Community Corps (NCCC) Project Sponsor Application. The AmeriCorps NCCC Project Sponsor Application is completed by organizations interested in sponsoring an AmeriCorps NCCC team. The NCCC is a full-time, residential, national service program whose mission is to strengthen communities and develop leaders through team-based national and community service.

A copy of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by September 17, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, National Civilian Community Corps; Attention Colleen Clay, Assistant Director Projects and Partnerships; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom, Room 8100, at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3459, Attention: Colleen Clay, Assistant Director.

(4) Electronically through *www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Colleen Clay, (202) 606–7561, or by email at *cclay@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The AmeriCorps NCCC Project Sponsor Application is completed by organizations interested in sponsoring an AmeriCorps NCCC team. Each year, AmeriCorps NCCC engages teams of members in projects in communities across the United States. Service projects, which typically last from six to eight weeks, address critical needs in natural and other disasters, infrastructure improvement, environmental stewardship and conservation, energy conservation, and urban rural development. Members construct and rehabilitate low-income housing, respond to natural disasters, clean up streams, help communities develop emergency plans, and address countless other local needs.

Current Action

CNCS seeks to renew and revise the current application.

The application will be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on March 31, 2013.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps NCCC Project Sponsor Application.

OMB Number: 3045–0010.

Agency Number: None

Affected Public: Current/prospective AmeriCorps NCCC Project Sponsors.

Total Respondents: 1200 annually.

Frequency: Rolling application process.

Average Time per Response: Averages 7.5 hours.

Estimated Total Burden Hours: 9,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 11, 2012.

Kate Raftery,

Director, AmeriCorps National Civilian Community Corps.

[FR Doc. 2012–17296 Filed 7–16–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the Entry Control Reconfiguration and Base Perimeter Fence Relocation in area A Wright-Patterson AF Base, Ohio, Final Environmental Impact Statement

ACTION: Notice of Availability (NOA) of a Record of Decision (ROD).

SUMMARY: On June 21, 2012, the United States Air Force signed the ROD for the Entry Control Reconfiguration and Base Perimeter Fence Relocation in Area A Wright-Patterson Air Force Base (WPAFB), Ohio Final Environmental Impact Statement (FEIS). The ROD states the Air Force decision to implement the Proposed Action to include reconfiguration of the entry

control facilities and relocate base perimeter fence across State Route 444 analyzed in the FEIS.

The decision was based on matters discussed in the FEIS, inputs from the public and regulatory agencies, and other relevant factors. The FEIS was made available to the public on May 11, 2012 through a NOA in the **Federal Register** (Volume 77, Number 92, Page 27771) with a wait period that ended on June 12 2012. The ROD documents only the decision of the Air Force with respect to the proposed Air Force actions analyzed in the FEIS. Authority: This NOA is published pursuant to the regulations (40 CFR Part 1506.6) implementing the provisions of the NEPA of 1969 (42 USC. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (EIAP) (32 CFR Parts 989.21(b) and 989.24(b)(7)) .

FOR FURTHER INFORMATION CONTACT: Ms. Estella Holmes, 88 ABW/PA 5735 Pearson Road, Building 10, Room 252, Wright-Patterson AFB, Ohio, 45433–5543, (937) 522–3522. Additional Information on the EIS can be found at: *http://www.wpafb.af.mil/units/cev/index.asp.*

Henry Williams Jr,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2012–17388 Filed 7–16–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1988–081]

Pacific Gas and Electric Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for temporary variance of the flow requirement, pursuant to Article 402 of the Haas-Kings River Hydroelectric Project.

b. *Project No.:* 1988–081.

c. *Date Filed:* June 5, 2012.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Haas-King River Hydroelectric Project.

f. *Location:* The Haas-King River Hydroelectric Project is located on the North Fork Kings River in Fresno County, near Fresno, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Neil J. Wong, Pacific Gas and Electric Company, 245 Market Street, San Francisco, California 94105, Tel: (415) 973–2109.

i. *FERC Contact:* Alyssa Dorval, (212) 273–5955, *alyssa.dorval@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* 15 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–1988–081) on any documents or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Pursuant to Article 402 of the project license, Pacific Gas and Electric Company (PG&E) is required to request a temporary amendment of flows from the Commission, if the departure from flows lasts for more than two weeks. PG&E is planning to construct a reinforced shotcrete lining in the lower, unlined portion of the Kings River Surge Shaft. This liner is being constructed to address seepage from the slope below the surge chamber, which has increased over the years. In order to make the repairs, PG&E will need to drain the Kings River Tunnel in a controlled manner. This condition will preclude the delivery of a water supply to maintain the minimum instream flow release at KI–31. It is estimated that the period of no release from the KI–31 could last approximately 11 weeks. The minimum flow requirement below Balch Afterbay Dam (KI–21) of 15 cubic feet per second (cfs) will be met at all times. PG&E will also release an additional 20 cfs at the Balch Afterbay Dam for a total of 35 cfs at the confluence of Dinkey Creek and the Kings River (KI–22). Additional natural flows from Dinkey Creek will provide a combined 20–50 cfs at KI–22.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17325 Filed 7–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2205–057, 2396–034, 2397–031, 2399–037, 2400–033, 2445–024, 2489–046, 2490–028, 2558–032, 2731–042, 2737–022, 11475–015, 11478–014, and 12766–004]

Central Vermont Public Service Corporation; Green Mountain Power Corporation; Notice of Application for Transfer of Licenses, and Soliciting Comments and Motions To Intervene

On June 28, 2012, Central Vermont Public Service Corporation (transferor or CVPSC) and Green Mountain Power Corporation (transferee or GMPC) filed an application to transfer the licenses and substitute applicant for the following projects:

Project No.	Project name	Location
2205	Lamoille River Hydroelectric	Lamoille River in Chittenden, Franklin, and Lamoille counties, Vermont.
2396	Pierce Mills Hydroelectric	Passumpsic River in Caledonia County, Vermont.
2397	Gage Hydroelectric	Passumpsic River in Caledonia County, Vermont.
2399	Arnold Falls Hydroelectric	Passumpsic River in Caledonia County, Vermont.
2400	Passumpsic Hydroelectric	Passumpsic River in Caledonia County, Vermont.
2445	Center Rutland Hydroelectric	Otter Creek in Rutland County, Vermont.
2489	Cavendish Hydroelectric	Black River in Windsor County, Vermont.
2490	Taftsville Hydroelectric	Ottaquechee River in Windsor County, Vermont.
2558	Otter Creek	Otter Creek in Rutland County, Vermont.
2731	Weybridge Hydroelectric	Otter Creek in Addison County, Vermont.
2737	Middlebury Lower Hydroelectric	Otter Creek in Addison County, Vermont.
11475	Carver Falls Hydroelectric	Poultney River in Washington County, New York and Rutland County, Vermont.
11478	Silver Lake Hydroelectric	Sucker Brook in Addison County, Vermont.
12766	Clay Hill Road Transmission Line	Six miles of 12.5 kV, three-phase transmission line mounted on top of CVPSC's Line along Clay Hill Road from Pole #115 to CVPSC's Quechee substation.

Applicants seek Commission approval to transfer the licenses for the above projects from the transferor to the transferee.

Applicants' Contact: Transferor: Mr. Michael Scarzello, P.E., Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 747–5207. Transferee: Ms. Mari M. McClure, Esq., Corporate Attorney, Green Mountain Power Corporation, 163 Acorn Lane, Colchester, VT 05446, (802) 655–8749. Also for the transferor and transferee: Ms. Nicole S. Allen and Ms. Carmen L. Gentile, Bruder, Gentile & Marcoux, LLP, 1701 Pennsylvania Ave. NW., Washington, DC 20006, (202) 296–1500.

FERC Contact: Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments and motions to intervene: *30 days* from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket numbers (P–2205–057, P–2737–022, P–11475–015, P–11478–014, P–12766–004, P–2490–028, P–2731–042, P–2396–034, P–2397–031, P–2399–037, P–2400–033, P–2445–024, P–2489–046, and P–2558–32) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: July 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17321 Filed 7–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–479–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Application

Take notice that on June 27, 2012, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 Highway 56, Owensboro, Kentucky 42301, filed an application in the above referenced docket pursuant to section 7(b) of the Natural Gas Act (NGA) requesting authorization to abandon in place, and certain sections by removal by request of landowners, approximately 16.14 miles of 20-inch diameter pipeline located in Oklahoma and Logan Counties, Oklahoma (Line V). Southern Star states that due to the age of Line V and the use of coupled pipe, Line V cannot be inspected to meet Pipeline Hazardous Materials Safety Administration (PHMSA) requirements. Southern Star asserts that there are no customers being served off Line V and the existing parallel loop Line VJ is adequate to serve Southern Star's firm contractual obligations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Phyllis K. Medley, Senior Analyst, Regulatory Affairs, Southern Star Central Gas Pipeline, Inc., 4700 Highway 56, Owensboro, Kentucky 42301 by telephone at (270) 852–4653 or by facsimile at (270) 852–5010.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 30, 2012.

Dated: July 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17323 Filed 7–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1825–001; ER10–1827–001.
Applicants: Cleco Power LLC, Cleco Evangeline LLC.
Description: Responses to Information Request regarding Notice of Change in Status filed by Cleco Power LLC, *et al.*
Filed Date: 6/26/12.
Accession Number: 20120626–5088.
Comments Due: 5 p.m. ET 7/17/12.

Docket Numbers: ER12–2221–000.
Applicants: Southern California Edison Company.
Description: GIA and Distribution Service Agreement SunEdison Utility Solutions LLC, Hesperia to be effective 7/11/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5000.
Comments Due: 5 p.m. ET 7/31/12.

Docket Numbers: ER12–2222–000.
Applicants: Duke Energy Carolinas, LLC.
Description: NCEMC NITSA Credits Amendment to be effective 7/1/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5027.
Comments Due: 5 p.m. ET 7/31/12.

Docket Numbers: ER12–2222–001.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits tariff filing per 35.17(b): Amendment to NCEMC NITSA Filing to be effective 7/1/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5091.
Comments Due: 5 p.m. ET 7/31/12.

Docket Numbers: ER12–2223–000.
Applicants: PacifiCorp.
Description: Roseburg FP Agreement for Reduction of Network Upgrade Credit Repayment to be effective 6/28/2012.
Filed Date: 7/10/12.
Accession Number: 20120710–5060.
Comments Due: 5 p.m. ET 7/31/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17340 Filed 7–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2639–002; ER11–2200–002; ER12–1716–001.
Applicants: Noble Americas Gas & Power Corp., Noble Americas Energy Solutions LLC, Your Energy Holdings, LLC.
Description: Notice of Change in Status of Noble Americas Gas & Power Corp., *et al.*
Filed Date: 7/9/12.
Accession Number: 20120709–5158.

Comments Due: 5 p.m. ET 7/30/12.

Docket Numbers: ER10–2794–005; ER10–2849–004; ER11–2028–005; ER12–1825–002; ER11–3642–004.

Applicants: EDF Trading North America, LLC, EDF Industrial Power Services (IL), LLC, EDF Industrial Power Services (NY), LLC, Tanner Street Generation, LLC, EDF Industrial Power Services (CA), LLC.

Description: Notice of Non-Material Change in Status of EDF Energy Trading North America, LLC *et al.*

Filed Date: 7/9/12.

Accession Number: 20120709–5166.

Comments Due: 5 p.m. ET 7/30/12.

Docket Numbers: ER10–2985–004; ER10–3049–005; ER10–3051–005.

Applicants: Champion Energy Marketing LLC, Champion Energy Services, LLC, Champion Energy, LLC.

Description: Notice of Non-Material Change in Status of Champion Energy Marketing LLC, *et al.*

Filed Date: 7/9/12.

Accession Number: 20120709–5159.

Comments Due: 5 p.m. ET 7/30/12.

Docket Numbers: ER12–684–001.

Applicants: ITC Midwest LLC.

Description: Filing of Refund Report to be effective N/A.

Filed Date: 7/9/12.

Accession Number: 20120709–5083.

Comments Due: 5 p.m. ET 7/30/12.

Docket Numbers: ER12–2217–000.

Applicants: Power Dave Fund LLC.

Description: Power Dave Fund Tariff to be effective 7/6/2012.

Filed Date: 7/9/12.

Accession Number: 20120709–5001.

Comments Due: 5 p.m. ET 7/30/12.

Docket Numbers: ER12–2218–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: SA 1993 Union Electric-Ameren to be effective 7/10/2012.

Filed Date: 7/9/12.

Accession Number: 20120709–5094.

Comments Due: 5 p.m. ET 7/30/12.

Docket Numbers: ER12–2219–000.

Applicants: W Power, LLC.

Description: W Power, LLC Initial Market-Based Rate Tariff to be effective 9/9/2012.

Filed Date: 7/9/12.

Accession Number: 20120709–5096.

Comments Due: 5 p.m. ET 7/30/12.

Docket Numbers: ER12–2220–000.

Applicants: Kansas City Power & Light Company.

Description: Kansas City Power & Light Company submits tariff filing per 35.13(a)(2)(iii: MBR Service Agreement 24 to be effective 7/1/2012.

Filed Date: 7/9/12.

Accession Number: 20120709–5102.

Comments Due: 5 p.m. ET 7/30/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17339 Filed 7–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–840–000.

Applicants: Ruby Pipeline, L.L.C.

Description: Supplement to FL&U and EPC Adjustment Filing.

Filed Date: 7/6/12.

Accession Number: 20120706–5109.

Comments Due: 5 p.m. ET 7/18/12.

Docket Numbers: RP12–855–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Bring Rate Case/Settlement Tariff Sheets Up-to-date to be effective 11/10/2011.

Filed Date: 7/9/12.

Accession Number: 20120709–5062.

Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: RP12–856–000.

Applicants: Cheyenne Plains Gas Pipeline Company, L.

Description: Table of Contents Update Filing to be effective 8/10/2012.

Filed Date: 7/9/12.

Accession Number: 20120709–5092.

Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: RP12–857–000.

Applicants: Dominion Transmission, Inc.

Description: DTI—Appalachian Gateway In-Service to be effective 9/1/2012.

Filed Date: 7/9/12.

Accession Number: 20120709–5161.

Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: RP12–858–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Devon 34694–37 Amendment to Neg Rate Agmt filing to be effective 7/10/2012.

Filed Date: 7/10/12.

Accession Number: 20120710–5032.

Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: RP12–859–000.

Applicants: Gulf South Pipeline Company, LP.

Description: QEP 37657–20 Amendment to Neg Rate Agmt filing to be effective 7/7/2012.

Filed Date: 7/10/12.

Accession Number: 20120710–5033.

Comments Due: 5 p.m. ET 7/23/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17338 Filed 7–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 553–221—Washington]

City of Seattle, WA; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's or FERC's) regulations, 18 CFR part 380, Commission staff has reviewed the application for amendment of license for the Skagit River Project (FERC No. 553) and has prepared an Environmental Assessment (EA). The project is located on the Skagit River in Skagit, Snohomish, and Whatcom Counties, Washington.

The EA contains the Commission staff's analysis of the potential environmental effects of construction and operation of a proposed second power tunnel and fish flow measures and concludes that authorizing the amendment, with appropriate environmental protective measures would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the EA are available for review in the Public Reference Room 2–A of the Commission's offices at 888 First Street NE., Washington, DC 20426. The EA may also be viewed on the Commission's Internet Web site (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Additional information about the project is available from the Commission's Web site using the eLibrary link. For assistance with eLibrary, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676; for TTY contact (202) 502–8659.

Dated: July 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17324 Filed 7–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2712–074; 2710–057]

Black Bear Hydro Partners, LLC, Maine; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) part 380 (Order No. 486, 52 **Federal Register** [FR] 47897), Commission staff has reviewed the application for the amendment of licenses for the Stillwater Hydroelectric Project (FERC Project No. 2712–074) and Orono Hydroelectric Project (FERC Project No. 2710–057), located on the Stillwater Branch of the Penobscot River in Penobscot County, near the communities of Old Town and Orono, respectively. The projects do not occupy any federal lands.

Staff prepared an Environmental Assessment (EA), which analyzes the potential environmental effects of the proposed modifications to the projects and the addition of new generating capacity, and concludes that authorizing amendments to the projects, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room 2–A of the Commission's offices at 888 First Street NE., Washington, DC 20426. The EA also may be viewed on the Commission's Internet Web site at (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 502–6088, or on the Commission's Web site using the eLibrary link. For assistance with eLibrary, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676; for TTY contact (202) 502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

For further information, contact Rachel Price by telephone at 202–502–8907 or by email at *Rachel.Price@ferc.gov.*

Dated: July 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17322 Filed 7–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–83–003]

Enogex LLC; Notice of Filing

Take notice that on July 6, 2012, Enogex LLC filed to revise its Statement of Operating Conditions (SOC) to synchronize its fuel tracker filings with its transportation SOC as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 16, 2012.

Dated: July 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17318 Filed 7–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 19, 2012, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **NOTE**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

983RD—MEETING

REGULAR MEETING

July 19, 2012, 10:00 a.m.

Item No.	Docket No.	Company
		ADMINISTRATIVE
A–1	AD02–1–000	Agency Business Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
		ELECTRIC
E–1	ER12–1265–000, ER12–1265–001, ER09–1049–005.	Midwest Independent Transmission System Operator, Inc.
E–2	ER12–1266–000, ER12–1266–001, ER11–4337–001.	Midwest Independent Transmission System Operator, Inc.
E–3	OMITTED	
E–4	AD12–9–000, AD11–11–000	Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects, Priority Rights to New Participant-Funded Transmission.
E–5	NP11–238–000	North American Electric Reliability Corporation.
E–6	RM12–9–000	Regional Reliability Standard PRC–006–SERC–01—Automatic Underfrequency Load Shedding Requirements.
E–7	EL12–19–001	FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC v. PJM Interconnection, L.L.C.
E–8	EL12–56–000	Energy Spectrum, Inc. and Riverbay Corporation v. New York Independent System Operator, Inc.
E–9	AC11–46–000	Ameren Corporation.
E–10	NJ08–2–001	United States Department of Energy—Bonneville Power Administration.
E–11	ER10–253–001, EL10–14–001	Primary Power, LLC.
E–12	EL10–52–001	*Central Transmission,* LLC v. *PJM Interconnection L.L.C.*
E–13	EL12–69–000	*Primary Power, LLC* v. *PJM Interconnection, L.L.C.*
E–14	EL12–24–000	*Pioneer Transmission, LLC* v. *Northern Indiana Public Service Company and Midwest Independent Transmission System Operator, Inc.*
E–15	EL12–28–000	*Xcel Energy Services Inc. and Northern States Power Company, a Wisconsin Corporation* v. *American Transmission Company, LLC.*
E–16	EL12–49–000	Northern Indiana Public Service Company.
E–17	EL12–55–000	*SIG Energy, LLLP* v. *California Independent System Operator Corporation.*
E–18	ER10–2061–000, ER10–2061–001, ER10–2061–002, ER10–2061–003, ER10–2061–004.	Tampa Electric Company.
E–19	ER11–4244–001	Midwest Independent Transmission System Operator, Inc.
		MISCELLANEOUS
M–1	RM12–13–000	Continuity of Operations Plan.
		GAS
G–1	RM96–1–037	Standards for Business Practices for Interstate Natural Gas Pipelines.
		HYDRO
H–1	P–13226–004	Blue Heron Hydro LLC.
H–2	P–2146–137	Alabama Power Company.
H–3	P–1881–076	PPL Holtwood, LLC.

Item No.	Docket No.	Company
	CERTIFICATES	
C–1	CP12–40–000	Questar Pipeline Company.
C–2	OMITTED	
C–3	CP12–47–000	Chipeta Processing LLC.

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

Dated: July 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17415 Filed 7–13–12; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14425–000]

Liberty University, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 15, 2012, Liberty University, Inc., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Scott's Mill Hydropower Project (project) to be located on the James River, in the City of Lynchburg, Virginia. The proposed project would be located in Amherst and Bedford Counties, Virginia. The project would not occupy any federal land. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) The existing 15-foot-high, 925-foot-long Scott's Mill dam, impounding a 316-acre reservoir with a normal maximum water surface elevation of 511 feet mean sea level; (2) a new powerhouse containing four generating units with a total installed capacity of 4.8 megawatts; (3) a new 500-foot-long underground transmission line; and (4) appurtenant facilities. The project would have an estimated annual generation of 10,500 megawatt-hours, and would be sold to a local utility.

Applicant Contact: Mr. Lee Beaumont, Assistant to the Chancellor, Liberty University, 1971 University Blvd., Lynchburg, Virginia 24502; phone: (434) 592–3315; email: *lbeaumont@liberty.edu.*

FERC Contact: Tim Looney; phone: (202) 502–6096.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14425) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17320 Filed 7–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Uniontown Hydro, LLC, Project No. 12958–001–Kentucky and Indiana, Uniontown Hydroelectric Project; Newburgh Hydro, LLC, Project No. 12962–001–Kentucky and Indiana, Newburgh Hydroelectric Project; Notice of Revised Restricted Service List for a Programmatic Agreement

Rule 2010 of the Federal Energy Regulatory Commission's (Commission's) Rules of Practice and Procedure, 18 CFR 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Kentucky State Historic Preservation Officer (SHPO), the Indiana SHPO, and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR Part 800, implementing section 106 of the

National Historic Preservation Act, *as amended* (16 U.S.C. 470f), to prepare a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places that could be affected by issuances of licenses for the proposed Uniontown Hydroelectric Project and Newburgh Hydroelectric Project.

The programmatic agreement, when executed by the Commission, the Kentucky SHPO, the Indiana SHPO, and the Advisory Council would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the licenses until the licenses expire or are terminated (36 CFR 800.13(e)). The Commission's responsibilities pursuant to section 106 for the proposed projects would be fulfilled through the programmatic agreement, which the Commission staff proposes to draft in consultation with certain parties.

On December 8, 2010, the Commission staff established a restricted service list for the proposed Uniontown Hydroelectric Project and Newburgh Hydroelectric Project.

The Commission staff is updating the restricted service list to reflect the parties as follows:

John Fowler, Executive Director, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue NW., Washington, DC 20004.

Jill A. McNutt, Kentucky Heritage Council, 300 Washington Street, Frankfort, KY 40601.

Phillip Johnson, Kentucky Heritage Council, 300 Washington Street, Frankfort, KY 40601.

Cathy Draeger-Williams, Indiana Division of Historic Preservation & Archaeology, 402 W. Washington Street, W274, Indianapolis, IN 46204.

Chad Slider, Indiana Division of Historic Preservation & Archaeology, 402 W. Washington Street, W274, Indianapolis, IN 46204.

Erik Steimle or Representative, Symbiotics, 2950 SE Stark Street, Suite 110, Portland, OR 97214.

Julie Olds, Miami Tribe of Oklahoma, P.O. Box 1326, Miami, OK 74355.

Bill Anoatubby, Governor, The Chickasaw Nation, P.O. Box 1548, Ada, OK 74821–1548.

Gingy Nail, THPO, The Chickasaw Nation, P.O. Box 1548, Ada, OK 74821–1548.

Ken Lamkin or Representative, U.S. Army Corps of Engineers, P.O. Box 59, Louisville, KY 40201–0059.

Dated: July 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17319 Filed 7–16–12; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2012–0088]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 99–14 Export-Import Bank Trade Reference form.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

EIB 99–14 Trade Reference form provides essential credit information used by Ex-Im Bank credit officers when analyzing requests for export credit insurance/financing support, both short-term (360 days and less) and medium-term (longer than 360 days), for the export of their U.S. goods and services. Additionally, this form is an integral part of the short-term Multi-Buyer export credit insurance policy for those policyholders granted foreign buyer discretionary credit limit authority (DCL). Multi-Buyer policy holders given DCL authority may use this form as the sole source or one piece among several sources of credit information for their internal foreign buyer credit decision which, in turn, commits Ex-Im's insurance.

Ex-Im Bank and its Multi-Buyer policyholders use the Trade Reference Form approximately 6,500 times annually. Thus the Trade Reference Form is critical to Ex-Im Bank and in particular to over 2,300 Multi-Buyer policyholders during their foreign buyer credit review process.

The form can be viewed at *www.exim.gov/pub/pending/eib99-14.pdf.*

DATES: Comments should be received on or before (insert 30 days after publication) to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Jean Fitzgibbon, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 99–14 Export-Import Bank Trade Reference form.

OMB Number: 3048-xxx.

Type of Review: Regular.

Need and Use: This form provides essential credit information used by Ex-Im Bank credit officers when analyzing requests for export credit insurance/financing support, both short-term (360 days and less) and medium-term (longer than 360 days), for the export of their U.S. goods and services. Additionally, this form is an integral part of the short-term Multi-Buyer export credit insurance policy for those policyholders granted foreign buyer discretionary credit limit authority (DCL). Multi-Buyer policy holders given DCL authority may use this form as the sole source or one piece among several sources of credit information for their internal foreign buyer credit decision which, in turn, commits Ex-Im's insurance.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 6,500.

Estimated Time per Respondent: 15 minutes.

Government Annual Burden Hours: 1,625 hours.

Government Annual Cost: $62,921.

Frequency of Reporting or Use: As needed.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–17390 Filed 7–16–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number,

and no person is required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT:

Gregory Hlibok, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 559–5158 (voice and videophone), or email: *Gregory.Hlibok@fcc.gov* <*mailto:Gregory.Hlibok@fcc.gov*>.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1150.

OMB Approval Date: 06/21/2012.

Expiration Date: 06/30/2015.

Title: Structure and Practices of the Video Relay Service Program, Second Report and Order and Order, CG Docket No. 10–51.

Form No.: N/A.

Estimated Annual Burden: 28 respondents; 89 responses; .017 hours (1 minute) to 50 hours per response; 934 burden hours per year; $0 annual cost burden.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found in sections 225. The law was enacted on July 26, 1990, as Title IV of the Americans with Disabilities Act, Public Law 101–336, 104 Stat. 327, 366–69.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On July 28, 2011, in document FCC 11–118, the Commission released a *Second Report and Order and Order,* published at 76 FR 47469, August 5, 2011, and at 76 FR 47476, August 5, 2011, adopting the final and interim rules—designed to help prevent fraud and abuse, and ensure quality service, in the provision of Internet-based forms of Telecommunications Relay Service (iTRS). *The Second Report and Order and Order* amends the Commission's process for certifying iTRS providers as eligible for compensation from the Interstate TRS Fund (Fund) for their provision of iTRS, as proposed in the Commission's April 2011 Further Notice of Proposed Rulemaking in the Video Relay Service (VRS) reform proceeding, CG Docket No. 10–51, published at 76 FR 24437, May 2, 2011. The Commission adopted the newly revised certification process to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules, and to eliminate waste, fraud and abuse through improved oversight of such providers.

The *Second Report and Order and Order* contains information collection requirements with respect to the following four requirements, all of which aims to ensure that providers are qualified to receive compensation from the Fund for the provision of iTRS and that the services are provided in compliance with the Commission's rules with no or minimal service interruption.

(*A*) *Required Evidence for Submission for Eligibility Certification.* The *Second Report and Order and Order* require that applicants must provide full and detailed information in its application for certification that show its ability to comply with the Commission's rules. The *Second Report and Order and Order* requires that applicants must provide a detailed description of how the applicant will meet all non-waived mandatory minimum standards applicable to each form of TRS offered, including documentary and other evidence, and in the case of VRS, such documentary and other evidence shall demonstrate that the applicant leases, licenses or has acquired its own facilities and operates such facilities associated with TRS call centers and employs their own communications assistants (CAs), on a full or part-time basis, to staff such call centers at the date of the application. Such evidence shall include but not be limited to:

1. For VRS applicants operating five or fewer call centers within the United States, a copy of each deed or lease for each call center operated by the applicant within the United States;

2. For VRS applicants operating more than five call centers within the United States, a copy of each deed or lease for a representative sampling (taking into account size (by number of CAs) and location) of five call centers operated by the applicant within the United States, together with a list of all other call center that they operate that includes the information required under section 64.604 (c)(5)(iii)(N)(2) of the Commission's rules;

3. For VRS applicants operating call centers outside of the United States, a copy of each deed or lease for each call center operated by the applicant outside of the United States; and

4. For all applicants, a list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational structure, and the names of its executives, officers, members of its board of directors, general partners (in the case of a partnership), and managing members (in the case of a limited liability company);

5. For all applicants, a list of the number of applicant's full-time and part-time employees involved in TRS operations, including and divided by the following positions: executives and officers; video phone installers (in the case of VRS), CAs, and persons involved in marketing and sponsorship activities;

6. Where applicable, a description of the call center infrastructure, and for all core call center functions (automatic call distribution, routing, call setup, mapping, call features, billing for compensation from the Fund, and registration) a statement whether such equipment is owned, leased or licensed (and from whom if leased or licensed) and proofs of purchase, leases or license agreements, including a complete copy of any lease or license agreement for automatic call distribution;

7. For all applicants, copies of employment agreements for all of the provider's executives and CAs need not be submitted with the application, but must be retained by the applicant and submitted to the Commission upon request; and

8. For all applicants, a list of all sponsorship arrangements relating to Internet-based TRS, including any associated written agreements.

(*B*) *Submission of Annual Report.* The *Second Report and Order and Order* requires that providers submit annual reports that include updates to the information listed under Section *A* above or certify that there are no changes to the information listed under Section *A* above.

(*C*) *Requiring Providers to Seek Prior Authorization of Voluntary Interruption of Service.* The *Second Report and Order and Order* requires that a VRS provider seeking to voluntarily interrupt service for a period of 30 minutes or more in duration must first obtain Commission authorization by submitting a written request to the Commission's Consumer and Governmental Affairs Bureau (CGB) at least 60 days prior to any planned service interruption, with detailed information of:

(i) Its justification for such interruption;

(ii) Its plan to notify customers about the impending interruption; and

(iii) Its plans for resuming service, so as to minimize the impact of such disruption on consumers through a smooth transition of temporary service to another provider, and restoration of its service at the completion of such interruption.

(*D*) *Reporting of Unforeseen Service Interruptions.* With respect to brief, unforeseen service interruptions or in the event of a VRS provider's voluntary service interruption of less than 30 minutes in duration, the *Second Report and Order and Order* requires that the affected provider submit a written notification to CGB within two business days of the commencement of the service interruption, with an explanation of when and how the provider has restored service or the provider's plan to do so imminently. In the event the provider has not restored service at the time such report is filed, the provider must submit a second report within two business days of the restoration of service with an explanation of when and how the provider has restored service.

(*E*) *Applicant Certifying Under Penalty of Perjury for Certification Application.*

The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an applicant for Internet-based TRS certification with first hand knowledge of the accuracy and completeness of the information provided, when submitting an application for certification for eligibility to receive compensation from the Intestate TRS Fund, must certify under penalty of perjury that all application information required under the Commission's rules and orders has been provided and that all statements of fact, as well as all documentation contained in the application submission, are true, accurate, and complete.

(*F*) *Certified Provider Certifying Under Penalty of Perjury for Annual Compliance Filings.*

The *Second Report and Order and Order* requires the chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an Internet-based TRS provider with first hand knowledge of the accuracy and completeness of the information provided, when submitting an annual compliance report under paragraph (g) of § 64.606 of the Commission's rules, must certify under penalty of perjury that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in the annual compliance report submission, are true, accurate, and complete.

(*G*) *Notification of Service Cessation.*

The *Second Report and Order and Order* requires the applicant for certification must give its customers at least 30 days notice that it will no longer provide service should the Commission determine that the applicant's certification application does not qualify for certification under paragraph (a)(2) of section 64.606 of the Commission's rules.

(*H*) *Notification on Web site.*

The *Second Report and Order and Order* requires the provider must provide notification of temporary service outages to consumers on an accessible Web site, and the provider must ensure that the information regarding service status is updated on its Web site in a timely manner.

On October 17, 2011, in document FCC 11–155, the Commission released a Memorandum Opinion and Order (*MO&O*), published at 76 FR 67070, October 31, 2011, addressing the petition for reconsideration filed by Sorenson Communications, Inc. (Sorenson). Sorenson concurrently filed a PRA comment challenging two aspects of the information collection requirements as being too burdensome. In response, the Commission modified the information collection requirements contained in the July 28, 2011 *Second Report and Order and Order.* Specifically, in the *MO&O,* the Commission revised the language in the rules to require that providers that operate five or more domestic call centers only submit copies of proofs of purchase, leases or license agreements for technology and equipment used to support their call center functions for five of their call centers that constitute a representative sample of their centers, rather than requiring copies for all call centers. Further, the Commission clarified that the rule requiring submission of a list of all sponsorship arrangements relating to iTRS only requires that a certification applicant include on the list associated written agreements, and does not require the applicant to provide copies of all written agreements.

Therefore, the information collection requirement listed above in section (A) 6 and 8 were revised to read as follows:

6. A description of the technology and equipment used to support their call center functions—including, but not limited to, automatic call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration—and for each core function of each call center for which the applicant must provide a copy of technology and equipment proofs of purchase, leases or license agreements in accordance with paragraphs (*a*)–(*d*) listed below, a statement whether such technology and equipment is owned, leased or licensed (and from whom if leased or licensed);

(*a*) For VRS providers operating five or fewer call centers within the United States, a copy of each proof of purchase, lease or license agreement for all technology and equipment used to support their call center functions, for each call center operated by the applicant within the United States;

(*b*) For VRS providers operating more than five call centers within the United States, a copy of each proof of purchase, lease or license agreement for technology and equipment used to support their call center functions for a representative sampling (taking into account size (by number of communications assistants) and location) of five call centers operated by the applicant within the United States; a copy of each proof of purchase, lease or license agreement for technology and equipment used to support their call center functions for all call centers operated by the applicant within the United States must be retained by the applicant for three years from the date of the application, and submitted to the Commission upon request;

(*c*) For VRS providers operating call centers outside of the United States, a copy of each proof of purchase, lease or license agreement for all technology and equipment used to support their call center functions for each call center operated by the applicant outside of the United States; and

(*d*) A complete copy of each lease or license agreement for automatic call distribution.

8. For all applicants, a list of all sponsorship arrangements relating to Internet-based TRS, including on that list a description of any associated written agreements; copies of all such arrangements and agreements must be retained by the applicant for three years from the date of the application, and submitted to the Commission upon request.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–17345 Filed 7–16–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0151)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On April 30, 2012 (77 FR 25479), the FDIC solicited public comment for a 60-day period on the renewal of the following information collection: Notice Regarding Assessment Credits (OMB No. 3064–0151). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before August 16, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

• *http://www.FDIC.gov/regulations/laws/federal/notices.html.*

• *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.

• *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collection of information:

Title: Notice Regarding Assessment Credits.

OMB Number: 3064–0151.

Frequency of Response: Once.

Affected Public: FDIC-insured institutions.

Estimated Number of Respondents: 4.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden: 8 hours.

General Description of Collection: FDIC-insured institutions must notify the FDIC if deposit insurance assessment credits are transferred, e.g., through a sale of the credits or through a merger, in order to obtain recognition of the transfer.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 11th day of July 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–17308 Filed 7–16–12; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting Notice for the President's Advisory Council on Faith-based and Neighborhood Partnerships

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the President's Advisory Council on Faith-based and Neighborhood Partnerships announces the following meeting:

Name: President's Advisory Council on Faith-based and Neighborhood Partnerships Council Meeting

Time and Date: Tuesday, July 31st 9:30 a.m.–12:00 p.m. (EST)

Place: Meeting will be held at a location to be determined in the White House complex, 1600 Pennsylvania Ave NW., Washington, DC. Space is extremely limited. Photo ID and RSVP are required to attend the event. Please RSVP to Ben O'Dell at *partnerships@hhs.gov.*

There will also be a conference call line available for those who cannot attend the meeting in person. The call-in line is: 1–877–568–4106, Passcode: 163–296–015.

Status: Open to the public, limited only by space available. Conference call limited only by lines available.

Purpose: The Council brings together leaders and experts in fields related to the work of faith-based and neighborhood organizations in order to: Identify best practices and successful modes of delivering social services; evaluate the need for improvements in the implementation and coordination of public policies relating to faith- based and other neighborhood organizations; and make recommendations for changes in policies, programs, and practices.

Contact Person for Additional Information: Please contact Ben O'Dell for any additional information about the President's Advisory Council meeting at *partnerships@hhs.gov.*

Agenda: Please visit *http://www.whitehouse.gov/partnerships* for further updates on the Agenda for the meeting.

Public Comment: There will be an opportunity for public comment at the end of the meeting from 11:30–12 noon (EST). Comments and questions can be asked over the conference call line, or sent in advance to *partnerships@hhs.gov.*

Dated: July 12, 2012.

Ben O'Dell,

Designated Federal Officer and Associate Director, HHS Center for Faith-based and Neighborhood Partnerships.

[FR Doc. 2012–17358 Filed 7–16–12; 8:45 am]

BILLING CODE 4154–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0708]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Form FDA 3728, Animal Generic Drug User Fee Act Cover Sheet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 16, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0632. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley II, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Form FDA 3728, Animal Generic Drug User Fee Act Cover Sheet—21 U.S.C. 379j–21 (OMB Control Number 0910–0632)—Extension

Section 741 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379j–21) establishes three different kinds of user fees: (1) Fees for certain types of abbreviated applications for generic new animal drugs, (2) annual fees for certain generic new animal drug products, and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs (21 U.S.C. 379j–21(a)). Because the submission of user fees concurrent with applications is required, the review of an application cannot begin until the fee is submitted. Form FDA 3728 is the Animal Generic Drug User Fee Act (AGDUFA) Cover Sheet, which is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees.

In the **Federal Register** of October 5, 2011 (76 FR 61709), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA Form Number	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
3728	20	2	40	.08 (5 min.)	3.2

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents to this collection of information are generic animal drug applicants. Based on FDA's database system, there are an estimated 20 sponsors of new animal drugs potentially subject to AGDUFA.

Dated: July 12, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17369 Filed 7–16–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Use of Influenza Disease Models To Quantitatively Evaluate the Benefits and Risks of Vaccines: A Technical Workshop; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: ''Use of Influenza Disease Models to Quantitatively Evaluate the Benefits and Risks of Vaccines: A Technical Workshop.'' The purpose of this public workshop is to provide stakeholders a forum to discuss the design of a model to quantitatively estimate the benefits and risks of a hypothetical influenza vaccine, and to seek from a range of experts, feedback on the current version of the model used by the Center for Biologics Evaluation and Research (CBER) and suggestions for further development.

The public workshop will include presentations and panel discussions with experts from academia, regulated industry, government, and other stakeholders.

Date and Time: The public workshop will be held on August 23, 2012, from 9 a.m. to 4 p.m.

Location: The public workshop will be held at the Bethesda North Marriott Hotel & Conference Center; 5701 Marinelli Rd., Bethesda, MD 20852; 301–822–9200.

Contact Person: Richard Forshee, Center for Biologics Evaluation and Research (HFM–210), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6042, email: *Richard.Forshee@fda.hhs.gov.*

Registration: Mail, fax, or email your registration information (including name, title, firm name, address, telephone, and fax numbers, and email address) to Richard Forshee (see *Contact Person*) by August 16, 2012. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space-available basis beginning at 8 a.m. If you need special accommodations due to a disability, please contact Richard Forshee (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The workshop will provide an opportunity for discussions on the application of open source influenza infectious disease computer simulation models to generate quantitative estimates of the benefits and risks of influenza vaccination.

The public workshop presentations and panel discussions will: (1) Discuss recent developments in open-source, agent-based, publicly available computer simulation tools to model influenza and other infectious diseases; (2) discuss and seek technical feedback on the CBER quantitative model of influenza vaccine benefit/risk; and (3) discuss possible applications of quantitative benefit/risk assessment methods to vaccine assessment of quantitative benefit/risk assessment methods to vaccine assessment.

Transcripts: Please be advised that as soon as possible after a transcript of the public workshop is available, it will be accessible at: *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/TranscriptsMinutes/default.htm.* Transcripts of the public workshop may also be requested in writing from the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857.

Dated: July 11, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17337 Filed 7–16–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Division of Nursing, Public Health Nursing Community Based Model of PHN Case Management Services

Announcement Type: New.

Funding Announcement Number: HHS–2012–IHS–PHN–0001.

Catalog of Federal Domestic Assistance Number: 93.933.

Key Dates

Application Deadline Date: August 14, 2012.

Review Date: August 20, 2012.

Earliest Anticipated Start Date: September 1, 2012.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive cooperative agreement applications for the Office of Clinical and Preventive Services (OCPS), Community Based Model of Public Health Nursing Case Management Services. This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2011; the Public Health Service Act, as amended, 42 U.S.C. 241; and the Indian Health Care Improvement Act, as amended, (IHCIA), 25 U.S.C. 1653(c). This program is described in the Catalog of Federal Domestic Assistance under 93.933.

Background

The IHS OCPS Public Health Nursing (PHN) Program serves as the primary source for national advocacy, policy development, budget development, and allocation for clinical, preventive, and public health nursing programs for the IHS Area Offices and Service Units. The IHS PHN Program is a community health nursing program that focuses on the goals of promoting health and quality of life, and preventing disease and disability. The PHN program provides quality, culturally sensitive health promotion and disease prevention nursing services through primary, secondary and tertiary prevention services to individuals, families, and community groups. It provides leadership in articulating the clinical, preventive, and public health needs of American Indian/Alaska Native (AI/AN) communities and developing, managing, and administering program functions related to PHN.

Purpose

The purpose of this IHS cooperative agreement is to improve specific health outcomes of an identified high risk group of patients through a community case management model that utilizes the PHN as a case manager. Research indicates nursing case management is a cost effective way to maximize health outcomes. Case management involves the client, family, and other members of the health care team. Quality of care, continuity, and assurance of appropriate and timely interventions are also crucial. In addition to reducing the cost of health care, case management has proven its worth in terms of improving rehabilitation, improving quality of life, increasing client satisfaction and compliance by promoting client self-determination. The PHN model of community based case management utilizes roles and functions of PHN services of assessment, planning, coordinating services, communication and monitoring. The goals and outcomes of the PHN case management model are early detection, diagnosis, treatment and evaluation that will improve health outcomes in a cost effective manner. This model utilizes all prevention components of primary, secondary and tertiary prevention in the home with patient and family. The community based case management model addresses the PHN scope of practice of working with individuals and families in a population-based practice to provide primary nursing care services. This project will focus on a PHN community based case management model. The project will be conducted in a phased approach, using the nursing process—assessment, planning, implementation, and evaluation.

First Phase: Assessment—Complete a generic community assessment (most PHN programs have this readily available as a part of their annual program plans). Include, if available, pertinent data from other local community assessments and local health status data of the community in the assessment. In addition, obtain input from key stake-holders such as community members, Tribal leaders, healthcare administration and community health groups to determine the health care priorities. Obtain approval for the establishment of the PHN case management program from healthcare administration, governing boards and medical executive committees as needed.

Second Phase: Planning—Based on the community assessment, the high risk population is identified and the planning of the case management project begins. Develop case management services addressing the priority health issues identified from the community assessment. Plan specific guidelines for the case management services of the high risk group of patients such as admission criteria, caseload size, policies and procedures, and an evaluation plan to include data tracking for outcomes generated. Identify if there is a best practice case management model available to replicate to target the identified high risk population. Obtain additional staff training needed for the community based nurse case management model such as evidence based practice, motivational interviewing, nurse competencies and any other training that would be applicable to the health issues identified in the case management model. Identify or develop patient education materials and community education materials for the program. Develop plans for project sustainability.

Third Phase: Implementation—The case management program includes admission criteria of the high risk population, caseload size, and appropriate health care standards. Establish patient caseload. Monitor progress and make adjustments as needed. Track patient data outcomes. Continue to plan ongoing sustainability of the program after the award period ends.

Fourth Phase: Patient Satisfaction—In order to evaluate program services; initiate a patient satisfaction program, such as one that provides patients with an opportunity to provide feedback on their experiences to assess the satisfaction of the population served. Analyze findings so a concentrated effort is made to relate the customer satisfaction results to internal process metrics, and examine trends over time in order to take action on a timely basis. Evaluate and revise the case management program if needed, review policies and procedures, education materials and staff competencies semi-annually. To the extent permitted by law, report back to key stake-holders progress of the project, especially to inform clients about changes brought about as a direct result of listening to their needs. Each site will share program material with IHS Headquarters PHN program. This information will be shared IHS-wide for replication of the project across IHS with credit given to the organization that developed the material. Poster presentation or oral presentation will be given at the National Nurse Leadership Council (NNLC) meetings or annual Nurse Leaders in Native Care (NLiNC) conference. The program established must be sustainable after completion of the project.

II. Award Information

Type of Award

Cooperative Agreement.

Estimated Funds Available

The total amount of funding identified for the current fiscal year (FY) 2012, is approximately $1,200,000. Individual award amounts are anticipated to be between $130,000 and $150,000. Competing and continuation awards issued under this announcement are subject to the availability of funds. In the absence of funding, the IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately eight awards will be issued under this program announcement.

Project Period

The project period will be for five years and will run consecutively from August 30, 2012 to August 29, 2017. Funding for continuation awards (FY 2013–FY 2017) is subject to the availability of funds and agency priorities.

Cooperative Agreement

In the Department of Health and Human Services (HHS), a cooperative agreement is administered under the same policies as a grant. The funding agency (IHS) is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

Substantial Involvement Description for Cooperative Agreement

A. IHS Programmatic Involvement

(1) Provide funded organizations with ongoing consultation and technical assistance to plan, implement, and evaluate each component of the comprehensive program as described under Recipient Activities below. Consultation and technical assistance will include, but not be limited to, the following areas:

(a) Interpretation of current scientific literature related to epidemiology, statistics, surveillance, Healthy People 2020 Objectives, and guidance on previous best practices of PHN Case Management grantee activities;

(b) Identify sources for additional staff training for the community based case management model and additional training needed such as evidence based practice, motivational interviewing, and any other training that would be applicable to the health issues addressed in the case management model.

(c) Design and implementation of program components (including, but not limited to, program implementation methods, recommendation of a community assessment tool, surveillance, epidemiologic analysis, development of programmatic evaluation, and coordination of activities);

(d) Identify, if available, previously established program management plans of PHN Case Management best practices (to replicate from previous demonstration PHN program awards);

(e) Conduct visits to assess program progress and mutually resolve problems, if travel funds are available and if needed; and,

(f) Coordinate these activities with all IHS PHN activities on a national basis.

B. Grantee Cooperative Agreement Award Activities

(1) Identify priority health issues and high risk patient population based on a comprehensive community assessment.

(2) Establish policies and procedures, develop case management services addressing the priority health issues identified, and identify mechanisms for tracking outcomes to improve the health care status.

(3) Collaborate with national IHS programs by providing data on a quarterly basis, and identify and document best practices for implementing PHN Case Management services.

(4) Participate in the development of systems for sharing, improving, and disseminating PHN case management best practices at a national level for purposes of supporting services for AI/AN communities, Government Performance Results Act (GPRA) of 1993, Healthy People 2020 and other national-level activities.

(5) Develop PHN case management services for high risk patients to coordinate medical care, including treatment and prevention services for comorbid conditions.

(6) Provide a three page mid-year report and no more than a ten page summary annual report at the end of each project year. The report should establish the impact and outcomes of best practices of PHN case management services in AI/AN communities during the funding period.

III. Eligibility Information

1. Eligibility

This is a full competition announcement.

Eligible Applicants must be one of the following:

i. An Indian Tribe, as defined by 25 U.S.C. 1603(14);

ii. A Tribal organization, as defined by 25 U.S.C. 1603(26); or

iii. An Urban Indian organization, as defined by 25 U.S.C. 1603(29). Applicants must provide proof of non-profit status with the application, e.g. 501(c)(3).

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required such as Tribal resolutions, proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

If application budgets exceed the highest dollar amount outlined under the ''Estimated Funds Available'' section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. IHS will not return the application. The applicant will be notified by email or certified mail by the Division of Grants Management of this decision.

Letters of Intent will not be required under this funding opportunity announcement.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding*

Questions regarding the electronic application process may be directed to Paul Gettys at (301) 443–2114.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single spaced and not exceed 5 pages).
- Project Narrative (must not exceed 10 pages).
  - Background information on the applicant.
  - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Tribal Resolution or Tribal Letter of Support (Tribal Organizations only).
- Letter of Support from Organization's Board of Directors.
- 501(c)(3) Certificate (if applicable).
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification of Lobbying.
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Organizational Chart (optional).
- Documentation of current OMB A–133 required Financial Audit (if applicable).

Acceptable forms of documentation include:

- Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
- Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database*

Public Policy Requirements:

All Federal-wide public policies apply to IHS grants with exception of the Discrimination policy.

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative should be a separate Word document that is no longer than ten pages and must: be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½″ × 11″ paper.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section IV.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they will not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming more familiar with the grantee's activities and accomplishments prior to this possible grant award. If the narrative exceeds the page limit, only the first ten pages will be reviewed. The 10-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information (3 pages)

Section 1: Needs

Describe how the applicant has determined it has the administrative infrastructure to support the activities to implement a PHN Case Management Program and evaluate and sustain it. Explain the previous planning activities the applicant has completed relevant to this or similar goals.

Part B: Program Planning and Evaluation (5 pages)

Section 1: Program Plans

Describe fully and clearly the direction the applicant plans to take in the PHN Case Management Program, including plans to demonstrate improved health outcomes of the identified high risk group of patients and services to the community it serves. Include proposed timelines.

Section 2: Program Evaluation

Describe fully and clearly the improvements that will be made by the applicant to manage the PHN Case Management Program and identify the anticipated or expected benefits for the Tribe and AI/AN people served.

Part C: Program Report (2 pages)

Section 1: Describe major accomplishments over the last 24 months. Please identify and describe significant program achievements associated with the delivery of quality health services or outreach services in the past 24 months in implementing previous grants, cooperative agreements or other related activities. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe major activities over the last 24 months. Please identify and summarize recent major health related project activities and the work done during the project period.

B. Budget Narrative: This narrative must describe the budget requested and match the scope of work described in the project narrative. The page limitation should not exceed five pages.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 12:00 a.m., midnight Eastern Daylight Time (EDT) on August 14, 2012. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. You will be notified by the Division of Grants Management via email or certified mail of this decision.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Paul Gettys, Division of Grants Management (DGM) (*Paul.Gettys@ihs.gov*) at (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained (see Section IV.6 below for additional information). The waiver must be documented in writing (emails are acceptable), before submitting a paper application. A copy of the written approval must be submitted along with the hardcopy that is mailed to the DGM. Once your waiver request has been approved, you will receive a confirmation of approval and the mailing address to submit your application. Paper applications that are submitted without a waiver from the Acting Director of DGM will not be reviewed or considered further for funding. You will be notified via email or certified mail of this decision by the Grants Management Officer of DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EDT, on the application deadline date. Late applications will not be accepted for processing or considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

• Pre-award costs are not allowable.
• The available funds are inclusive of direct and appropriate indirect costs.
• Only one grant/cooperative agreement will be awarded per applicant.
• IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the ''Find Grant Opportunities'' link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

• Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
• If you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
• Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and waiver from the agency must be obtained.
• If it is determined that a waiver is needed, you must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from our standard electronic submission process.
• If the waiver is approved, the application should be sent directly to the DGM by the deadline date of August 14, 2012.
• Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.
• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGM.
• All applicants must comply with any page limitation requirements described in this Funding Announcement.
• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download your application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGM nor the Division of Nursing, Public Health Nursing will notify applicants that the application has been received.
• Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the CCR database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies your entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, you may access it through *http://fedgov.dnb.com/webform,* or to expedite the process, call (866) 705–5711.

Effective October 1, 2010, all HHS recipients were asked to start reporting information on subawards, as required by the Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''). Accordingly, all IHS grantees must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the ''Transparency Act.''

Central Contractor Registry (CCR)

Organizations that have not registered with CCR will need to obtain a DUNS number first and then access the CCR online registration through the CCR home page at *https://www.bpn.gov/ccr/default.aspx* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour and your CCR registration will take 3–5 business days to process. Registration with the CCR is free of charge. Applicants may register online at *https://www.bpn.gov/ccrupdate/NewRegistration.aspx.*

Additional information on implementing the ''Transparency Act,'' including the specific requirements for DUNS and CCR, can be found on the IHS Grants Management, Grants Policy Web site: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The ten page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See ''Multi-year Project Requirements'' at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 60 points is required for funding. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (5 points)

(1) Provide demographic information, prevalence rates of disease, and baseline health data to substantiate the case management for the high risk group of patients.

(2) Describe how data collection will support the stated project objectives and how it will support the project evaluation in order to determine the impact of the project. Address how the proposed project will result in health improvements.

B. Project Objective(s), Work Plan and Approach (35 points)

(1) Goals and Objectives (15 Points).

i. Establish two to three measurable objectives within a plan that will provide significant outcome. Goals/Objectives should be specific with a realistic timeline.

(2) Methodology/Activities (20 Points).

i. Describe the activities that will be implemented in a work plan to meet the objectives. The work plan should be directly related to the objectives.

ii. Describe how you will monitor the objectives (chart reviews, patient comments/feedback, etc.).

iii. Describe any collaborative efforts with any programs outside of PHN.

C. Program Evaluation (20 points)

Describe the methods for evaluating the project activities. Each proposed project objective should have an evaluation component and the evaluation activities should appear on the work plan. At a minimum, projects should describe plans to collect or summarize evaluation information about all project activities. Please address the following for each of the proposed objectives:

(1) Describe the community assessment results and what data will be selected to evaluate the success of the objective(s).

(2) Describe how the data and patient satisfaction information will be collected to assess the programs objective(s) (e.g., methods used such as, but not limited to, providing mechanisms for patients to provide feedback on their experiences).

(3) Identify when the data will be collected and the data analysis completed.

(4) Describe the extent to which there are specific data sets, data bases or registries already in place to measure/monitor meeting objective.

(5) Describe who will collect the data and any cost of the evaluation (whether internal or external)?

(6) Describe where, when and to whom the data will be presented (only to the extent permitted by law, the data to be reported back to key stake-holders on the progress of the project, especially to inform clients about changes brought about as a direct result of listening to their needs).

(7) Address anticipated obstacles to the success of the proposal such as underlying causes and the nature of their influence on accomplishing the objectives.

(8) Describe how the community assessment will be used to identify high risk group of patient(s).

(9) Describe the process that will be used to follow-up on the PHN Case Management Project findings/conclusions.

D. Organizational Capabilities, Key Personnel and Qualifications (25 points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the project outlined in the work plan.

(1) Describe the organizational structure.

(2) Describe what equipment (i.e., phone, Web sites, etc.) and facility space (i.e., office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased throughout the agreement.

(3) List key personnel who will work on the project.

i. Identify staffing plan, existing personnel and new program staff to be hired.

ii. In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties indicating desired qualifications, experience, and requirements related to the proposed project and how they will be supervised. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities and who will determine if the work of a contractor is acceptable.

iii. If the project requires additional personnel beyond those covered by the grant award, (i.e., Information Technology support, volunteers, interviewers, etc.), note these and address how these positions will be filled and, if funds are required, the source of these funds.

iv. If personnel are to be only partially funded by this grant, indicate the percentage of time to be allocated to this project and identify the resources used to fund the remainder of the individual's salary.

(4) Capability

i. Briefly describe the facility and user population.

ii. Describe the organization's ability to conduct this initiative through linkages to community resources: partnerships established to refer out for additional services as needed for specialized treatment, care, and counseling services.

E. Categorical Budget and Budget Justification (15 points)

Provide a clear estimate of the project program costs and justification for expenses for the entire grant period. The budget and budget justification should be consistent with the tasks identified in the work plan. The budget focus should be on developing and sustaining PHN case management services as well as supporting retention into care.

(1) A categorical budget (Form SF 424A, Budget Information Non-Construction Programs) completing each of the budget periods is requested.

(2) Budget narrative that serves as justification for all costs, explaining why each line item is necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of allowable costs.

(3) Provide a succinct description of specific roles and activities of each person involved in the proposed project and their ability to perform in that capacity.

(4) Budget justifications should include a brief narrative for the second year.

(5) If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

Multi-Year Project Requirements

Projects requiring second, third, fourth, and/or fifth year funding must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project.

Appendix Items

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- If including organizational chart(s), highlight proposed project staff and

their supervisor(s) as well as other key contacts within the organization and community contacts.

• Additional documents to support narrative (i.e. data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. Applicants will be notified by DGM, via email or letter, to outline minor missing components (i.e., signature on the SF–424, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be considered to be ''Disapproved'' and will be informed via email or regular mail by the IHS Program Office of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to each disapproved applicant. The summary statement will be sent to the Authorized Organizational Representative (AOR) that is identified on the face page (SF–424), of the application within 60 days of the completion of the Objective Review.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM and will be mailed via postal mail or emailed to each entity that is approved for funding under this announcement. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 60, and were deemed to be disapproved by the ORC will receive an Executive Summary Statement from the IHS Program Office within 30 days of the conclusion of the ORC outlining the weaknesses and strengths of their application submitted. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be ''Approved'' but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY2012, the approved application maybe re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS Program Office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS Grants Management Official announcing to the Project Director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

• 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.

• 45 CFR Part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, and other Non-profit Organizations.

C. Grants Policy:

• HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

• Title 2: Grant and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87).

• Title 2: Grant and Agreements, Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

E. Audit Requirements:

• OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

2. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *http://rates.psc.gov/* and the Department of Interior (National Business Center) *http://www.aqd.nbc.gov/services/ICS.aspx.* If your organization has questions regarding the indirect cost policy, please call (301) 443–5204 to request assistance.

4. Reporting Requirements

Grantees must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Division of Payment Management, HHS at: *http://www.dpm.psc.gov.* It is recommended that you also send a copy of your FFR (SF–425) report to your Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: the Progress Reports and Federal Financial Report.

C. Federal Subaward Reporting System (FSRS)

This award may be subject to the ''Transparency Act'' subaward and executive compensation reporting requirements of 2 CFR Part 170.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires the Office of Management and Budget (OMB) to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The ''Transparency Act'' also includes a requirement for recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

Effective October 1, 2010, HIS implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding this requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 subaward obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) The project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 subaward obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting requirements. For the full IHS award term implementing this requirement and additional award applicability information, visit the Grants Management Grants Policy Web site at: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.*

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to:

Ms. Tina Tah, RN/BSN/MBA, Project Official, Indian Health Service, 801 Thompson Avenue, Suite 329, Rockville, Maryland 20852, (301) 443–0038, *tina.tah@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to:

Mr. Andrew Diggs, Grants Management Specialist, Indian Health Service, 801 Thompson Avenue, TMP Suite 300, Rockville, Maryland 20852, (301) 443–2262, *Andrew.diggs@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: July 5, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–17295 Filed 7–16–12; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2012–0019; OMB No. 1660–0073]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use. There has been a correction in the burden estimate of 476 since publication of the 60 day **Federal Register** Notice, 77 FR 27076, May 8, 2012. There has been an adjustment decrease of 114 burden hours due to consolidation of FEMA Form 089–13 with FEMA Form 089–0–10A thru I Workbook. Therefore the estimated total annual burden hours are currently 364 hours.

DATES: Comments must be submitted on or before August 16, 2012.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: National Urban Search and Rescue Grant Program.

Type of information collection: Revision of a currently approved information collection.

Form Titles and Numbers: FEMA Form 089–010A thru I: Workbook, Urban Search Rescue Response System; FEMA Form 089–0–11, Urban Search and Rescue Response System Semi-Annual Performance Report; FEMA Form 089–0–12, Urban Search and Rescue Amendment Form; FEMA form 089–0–14, Urban Search and Rescue Reponse System Task Force Self Evaluation Scoresheet; and FEMA Form 089–0–15, Urban Search and Rescue Response System Task Force Deployment Data.

Abstract: The information collected for the National Urban Search and Rescue Grant Program evaluate the grantee's proposed use of funds and is required information needed in order to receive Federal funding. The forms used in this collections are used by grantees to provide FEMA with cooperative agreements and a description of the types of eligible activities the grantee will undertake and a plan for expending and monitoring funds.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 28 repondents.

Estimated Total Annual Burden Hours: 364 hours.

Estimated Cost: There are no recordkeeping, capital, start-up maintenance costs associated with this information collection.

Dated: July 11, 2012.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2012–17361 Filed 7–16–12; 8:45 am]

BILLING CODE 9111–54–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5613–N–07]

Privacy Act of 1974; Proposed New Routine Use—HUD's Routine Use Inventory

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Proposal for new routine uses.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), and Office of Management and Budget (OMB), Circular No. A–130, notice is hereby given that the Department of Housing and Urban Development, Office of the Chief Information Officer, is establishing 24 ''blanket'' routine uses to be applicable to more than one HUD system of records. The Department published on September 14, 2007 at 72 FR 52572 a notice to establish 1 blanket routine use proposal applicable to all its systems of records. This proposal provides an update to that proposal and is one of the steps required to establish a list of comprehensive and case specific routine uses for current and future system of records publications. Further, publishing this system notice will permit the Department to save cost, accomplish its mission, managerial, and other responsibilities more efficiently and effectively.

DATES: *Effective date:* This proposal shall be effective without further notice on August 16, 2012, unless comments are received on or before that date that would result in a contrary determination.

Comments Due Date: August 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this new routine use to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Fax comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: The Chief Privacy Officer, telephone number (202) 402–8073. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The following routine uses describe those types of disclosures which are common to more than one HUD Privacy Act system of records at which HUD is establishing as ''blanket'' routine uses. Unless this or other published notice expressly provides otherwise, these blanket routine uses shall apply, without need of further implementation, to every HUD Privacy Act system of records. These blanket routine uses supplement but do not replace any routine uses that are separately published in the notices of individual record systems to which the blanket routine uses apply. HUD proposes blanket routine uses that will: (1) Permit the Department to accomplish its mission, managerial, and other responsibilities more efficiently and effectively; (2) minimize through use of standardized wording the potential for misunderstanding or misinterpretation which might arise from unintended variations in different versions of common routine uses; and (3) reduce cost and duplication of effort in the publication and maintenance of HUD's Privacy Act issuances; (4) revise and update Privacy Act record locations for its systems of records; and (5) present the information to the public and HUD Departmental offices in a structure that is easier to understand and use.

Pursuant to conditions of the Privacy Act, the routine uses are consistent with the collection of information pertaining to making such disclosures to individuals pursuant to requirements of the Privacy Act records, when, in doing so, it will help protect the interest of individuals, and improve the Department's ability to take the appropriate steps necessary to accomplish its mission and business requirements more efficiently and effectively.

Title 5 U.S.C. 552a(e)(r) and (11) requires that the public be afforded a 30 day period in which to comment on any new or amended use of information in a system of records, and require published notice of the existence and characters of the systems of records proposing the change. The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted to the Committee on Homeland Security and Governmental Affairs of the United States Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, Federal Agency Responsibilities for Maintaining Records about Individuals, dated June 25, 1993 (58 FR 36075, July 2, 1993). HUD deems the disclosure(s) made to such agencies, entities, and persons from the following systems or records when authorized by statute to assist in connection with its mission. The existence and characters of HUD's completed Privacy Act systems of records can be viewed on the agency's Web site at: *http://www.hud.gov/offices/cio/privacy/pia/fednotice.cfm* and currently consist of the following:

System code	System title
FHEO–01	Equal Employment Opportunity Monitoring and Analysis System.
HUD/ADMIN–01	Transit Subsidy System.
HUD/ADM–02	HUD's Direct Distribution Center System.
HUD/ADMIN–03	One Touch Student Response System.
HUD/ADMIN–04	Training Information System.
HUD/ADMIN–05	Training Announcement, Nomination, and Confirmation System.
HUD/ADMIN–06	Personal Security Files.
HUD/ADMIN–08	Grants Interface Management System.
HUD/ADMIN–09	Correspondence Tracking System.
HUD/CFO/01	HUD Central Accounting and Program System.

System code	System title
HUD/CFO–02	Audit Resolution and Corrective Action Tracking System.
HUD/CFO–03	Line of Credit Control Systems.
HUD/CFO–04	Integrated Automated Travel System.
HUD/CFO–05	Personal Services Cost SubSystem.
HUD/CFO–06	Financial Data Mart.
HUD/CPD–1	Rehabilitation Loans-Delinquent/Default.
HUD/CPO–1	HUD Integrated Acquisition Management System.
HUD/DEPT–1	Accidents, Employees and/or Government Vehicles.
HUD/DEPT–2	Accounting Records.
HUD/DEPT–4	Fee Inspectors and Appraisers.
HUD/DEPT–5	Architects and Engineers.
HUD/DEPT–10	Single Family Construction Complaints Files.
HUD/DEPT–15	Equal Opportunity Housing Complaints.
HUD/DEPT–20	Single Family Homeownership Assistance Application and Recertification.
HUD/DEPT–22	Housing Counseling.
HUD/DEPT–23	Single-Family Research Files.
HUD/DEPT–24	Investigation File.
HUD/DEPT–25	Legal Actions Files.
HUD/DEPT–28	Property Improvement and Manufactured (Mobile) Home Loans—Default.
HUD/DEPT–29	Rehabilitation Grants and Loans Files.
HUD/DEPT–32	Mortgages—Delinquent/Default/Assigned/Temporary Mortgage Assistance Payments (TMAP) Program.
HUD/DEPT–34	Pay and Leave Records of Employees.
HUD/DEPT–37	Personnel Travel System.
HUD/DEPT–42	Rent Subsidy Program Files.
HUD/DEPT–43	Property Disposition Files (A43; A43C; A80S).
HUD/DEPT–44	Relocation Assistance Files (Revalidate Deletion).
HUD/DEPT–46	Single Family Case Files.
HUD/DEPT–51	Standards of Conduct Files.
HUD/DEPT–52	Privacy Act Requesters.
HUD/DEPT–53	Consumer Complaint Handling System.
HUD/DEPT–54	Parking Permit Application Files.
HUD/DEPT–56	Telephone Numbers of HUD Officials.
HUD/DEPT–62	Claims Collection Records.
HUD/DEPT–63	Secretary's Correspondence Control System.
HUD/DEPT–64	Congregate Housing Services Program Data Files.
HUD/DEPT–65	IDEAS Program Case Files.
HUD/DEPT–66	Grievance Records.
HUD/DEPT–67	Employee Counseling and Occupational Health Records.
HUD/DEPT–68	HUD Government Motor Vehicle Operators Records.
HUD/DEPT–69	Intergovernmental Personnel Act Assignment Records.
HUD/DEPT–71	Identity Management System. (IDMS) formerly Employee Identification File
HUD/DEPT–72	Congressional Correspondence Files (Communication Control System).
HUD/DEPT–73	Government Property on Personal Charge Files.
HUD/DEPT–74	Executive Emergency Cascade Alerting System.
HUD/DEPT–75	Priority Consideration/Special Reassignment Files.
HUD/DEPT–76	HUD Employee Locator File.
HUD/DEPT–77	Audit Planning and Operations System (APOS).
HUD/DEPT–78	Government National Mortgage Association Registry of Foreclosure Attorneys.
HUD/DEPT–80	Long Distance Telephone Call Detail System.
HUD/DEPT–81	Ethics Filings.
HUD/DEPT–82	ADP Security Clearance Information System.
HUD/EC–01	Compliance Case Tracking System.
HUD/EC–02	Departmental Tracking System.
HUD/FHEO–06	Title Eight Automated Paperless Office Tracking System (TEAPOTs).
HUD/GNMA–01	Mortgage-backed Securities Unclaimed Funds System.
HUD/GNMA–02	Master Subservicer System.
HUD/H–3	Single Family Housing Monitoring System.
HUD/H–5	Single Family Computerized Homes Underwriting Management System.
HUD/H–6	Single Family Section 518 Files (Constructed Complaints).
HUD/H–7	Previous Participation Review System and Active Partners Performance System Previous Participation Files.
HUD/H–8	Property Rental Files/Integrated Disbursement and Information System.
HUD/H–9	Property Management Records.
HUD/H–11	Tenant Housing Assistance and Contract Verification Data.
HUD/H–12	Housing Compliance Files.
HUD/HS–10	Single Family Insurance System and Home Equity Conversion Mortgage System.
HUD/HS–15	Single Family Enterprise Data Warehouse System.

System code	System title
HUD/HS–16	Single Family Neighborhood Watch Early Warning System.
HUD/HS–22	Housing Counseling System (HCS) sub-module Client Activity Report System (CARs).
HUD/HS–54	Title I Insurance System.
HUD/HS–55	Debt Collection and Asset Management System.
HUD/HS–56	Distributive Shares and Refunds System.
HUD/HS–57	Single Family Mortgage Notes System.
HUD/HS–58	Asset Disposition and Management System.
HUD/HS–60	Nonprofit Data Management System/Institution Master File.
HUD/HSG–01	Single Family Housing Enterprise Data Warehouse.
HUD/MFH–08	Development Application Processing System.
HUD/MFH–10	Real Estate Management System/Integrated Real Estate Management System.
HUD/PD&R–01	HUD Veterans Homelessness Preventive Demonstration Evaluation Data Files System.
HUD/PD&R–6	Real Estate Settlement Cost Research Files.
HUD/PD&R–7	Section 8 Program Research Data Files.
HUD/PD&R–8	Income Certification Evaluation Data Files.
HUD/PD&R–9	HUD USER File for Research Products, Services and Publications.
HUD/PD&R–10	Housing Counseling Research Data Files/Homeless Families Impact Study Data Files.
HUD/PD&R–11	Rapid Re-Housing for Homeless Data.
HUD/PIH–01	Inventory Management System formerly Public and Indian Housing Information Center (PIC).
HUD/PIH–02	HUD Veterans Affairs Supportive Housing System.
HUD/PIH–5	Enterprise Income Verification.
HUD/PIH–06	Tracking-At-A-Glance.
HUD/PIH–07	Disaster Information System (DIS).
HUD/PIH–08	Efforts to Outcome Case Management System/Case Management System for the Disaster Housing Assistance Program (DHAP–IKE).
HUD/OIG–1	Investigative Files.
HUD/OIG–2	Hotline Complaint Files.
HUD/OIG–3	Name Indices System.
HUD/OIG–4	Independent Auditor Monitoring Files.
HUD/OIG–5	AutoAudit.
HUD/OIG–6	AutoInvestigation.
HUD/OIG–7	Giglio Information Files.
HUD/REAC–2	Independent Public Accountant Quality Assurance Files.
HUD/REAC–3	Quality Assurance/Quality Control Administrative.
HUD/HS–52	Single Family Acquired Asset Management System.
HUD/HS–54	Title I Insurance System.
HUD/HS–59	Single Family Mortgage Notes Recovery Technology System.
HUD/HS–60	Institution Master File/Nonprofit Data Management System.
HUD/OHHLHC–1	Compliance Investigation and Enforcement Files (“CHIEF”).
HUD/SFH–01	Single Family Default Monitoring System.
HUD/SF–02	Single Family Insurance System CLAIMS SubSystem.
HUD/SF01.2502	Lender Electronic Assessment Portal.
ODEEO–1	Equal Employment Opportunity Monitoring and Analysis System.
OFHEO–1	Financial Management System.
OFHEO–2	Pay and Leave System.
OFHEO–3	Employee Identification Card System.
OFHEO–4	Property Inventory System.
OFHEO–5	Senior Staff Biography System.

Accordingly, this notice establishes routine uses for all records within HUD's systems of records inventory, which is subject to the Privacy Act of 1974, as amended. Additionally, the text of many of these routine uses model best practices that have already been adopted by several agencies; including the Department of Justice for the same purpose described in this notice. Records contained in this system notice that have been placed on HUD's Public Record domain are available upon request.

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the routine uses specifically described in each system of records notice, records or information in the systems of records maintained by the Department may be disclosed pursuant to 5 U.S.C. 552a(b)(3) as described below under Appendix I, provided that no routine use specified herein shall be construed to limit or waive any other routine use or exemption specified in the text of the individual system of records notice.

Pursuant to 5 U.S.C. 552a(k)(2), records in these system notices, and any others which reflect records that are designated as exempt, from the requirements of certain subsections of (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and/or (f) of 5 U.S.C. 552a under a promulgated Rule, or those that are restricted from release by statutory or regulatory requirements are prohibited from disclosure (to which shall apply only to those exemptions established in the records system notice for the particular system).

Authority: 5 U.S.C. 552a.

Dated: June 27, 2012.

Kevin R. Cooke,

Deputy Chief Information Officer.

Appendix I

HUD's Library of Routine Uses

Authorized disclosures applicable to one or more HUD Privacy Act system of records. The Privacy Act allows HUD to disclose its Privacy Act records in the following manner to appropriate agencies, entities, and persons below to the extent such disclosures are compatible with the purpose for which the record was collected, as set forth in each system of records notice and in the following paragraphs (1)–(19), provided that no routine use specified herein shall be construed to limit or waive any other routine use or exemption specified either herein or in the text of the individual system of records notice. (These routine uses are not meant to exclude prior routine use publications and may overlap in some cases.)

(1) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

(2) To the National Archives and Records Administration (NARA) and the General Services Administration (GSA) for records having sufficient historical or other value to warrant its continued preservation by the United States Government, or for inspection under authority of Title 44, Chapter 29, of the United States.

(3) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(4) To appropriate Federal, state, local government, or person pursuant to a showing of compelling circumstances affecting the health or safety or vital interest of an individual or data subject, including assisting such agency(ies) or organizations in preventing the exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; if upon such disclosure appropriate notice is transmitted to the last known address of such individual identify the health threat or risk.

(5) To a consumer reporting agency, when trying to collect a claim of the Government, in accordance with 31 U.S.C. 3711(e).

(6) To contractors, grantees, experts, consultants, and the agents of thereof, and others performing or working on a contract, service, grant, cooperative agreement with HUD, when necessary to accomplish an agency function related to its system of records, limited to only those data elements considered relevant to accomplishing an agency function. Individuals provided information under this routine use is subject to the same Privacy Act requirements and limitations on disclosure as are applicable to HUD officers and employees.

(7) To other Federal agencies or non-Federal entities with whom HUD has an approved computer matching effort, limited to only those data elements considered relevant to determine eligibility under a particular benefit programs administered by those agencies or entities or by HUD or any component thereof, to improve program integrity, and to collect debts and other monies owed under those programs.

(8) To contractors, experts, consultants with whom HUD has a contract, service agreement or other assignment of the Department, when necessary to utilize relevant data for purposes of testing new technology and systems designed to enhance program operations and performance.

(9) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities including but not limited to state and local governments, and other research institutions or their parties entities and their agents with whom HUD has a contract, service agreement, grant, cooperative agreement with HUD, when necessary to accomplish an agency function related to a system of records for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

(10) To other Federal agencies or non-Federal entities, including but not limited to state and local government entities with whom HUD has a contract, service agreement, grant, cooperative agreement, or computer matching agreement to assist such agencies with preventing and detecting improper payments, or fraud, or abuse in major programs administered by the Federal government, or abuse by individuals in their operations and programs, but only to the extent that the information is necessary and relevant to preventing improper payments for services rendered under a particular Federal or non-federal benefits programs of HUD or any of their components to verify pre-award and pre-payment requirements prior to the release of Federal Funds.

(11) To appropriate agencies, entities, and persons when: (a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised; (b) HUD has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

Case Specific Actions, HUD may disclose records compatible to one of its system of records notices during case specific circumstances, when appropriate, as follows:

(12) To appropriate Federal, state, local, tribal, or governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws.

(13) To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

(14) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena or to a prosecution request when such records to be released are specifically approved by a court provided order.

(15) To appropriate Federal, state, local, tribal, or governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws.

(16) To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

(17) To the Department of Justice (DOJ) when seeking legal advice for a HUD initiative or in response to DOJ's request for the information, after either HUD or DOJ determine that such information is relevant to DOJ's representatives of the United States or any other components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which HUD collected the records. HUD on its own may disclose records in this system of records in legal proceeding before a court or administrative body after determining that the disclosure of the records to the court of administrative body is a use of the information contained in the records that is compatible with the purpose for which HUD collected the records.

(18) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

(19) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities including but not limited to

state and local governments, with whom HUD has a contract, service agreement, grant, cooperative agreement with the Department of Housing and Urban Development for statistical analysis to advance the goals of the nation's federal strategic plan to prevent and end veterans homelessness. The records may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals, or providers of services with respect to homeless veteran's efforts.

[FR Doc. 2012–17364 Filed 7–16–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5613–N–06]

Privacy Act of 1974; Notice of a New System of Records, Office of General Counsel E-Discovery Management System

AGENCY: Office of the Chief Information Officer.

ACTION: Notification of New Privacy Act System of Records, E-Discovery Management System.

SUMMARY: Pursuant to the provision of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of Housing and Urban Development (HUD) is providing notice of its intent to establish a new system of records for the Office of General Counsel (OGC) E-Discovery Management System (EDMS). The OGC discovery productions typically require the preservation, collection and analysis of massive emails, word processing documents, PDF files, spreadsheets, presentations, database entries, and other documents in a variety of electronic file formats, as well as paper records. EDMS is expected to improve significantly the efficiency of OGC's processing of records during the discovery and processing of litigation requests and will dramatically reduce the time spent on the document review and production process. The Department will be issuing a Final Rule on the exemptions elsewhere in the **Federal Register** concurrent with the publishing of this updated System of Records Notice.

DATES: *Effective Date:* This proposal shall become effective, without further notice, *August 16, 2012,* unless comments are received during or before this period which would result in a contrary determination.

Comments Due Date: August 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–3000. Communications should refer to the above docket number and title. FAX comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Inquiries pertaining to Privacy Act records, contact Donna Robinson-Staton, Chief Privacy Officer, telephone number (202) 402–8073, 451 Seventh Street SW., Washington, DC 20410 (Attention: Capitol View Building, 4th Floor) [The above telephone numbers are not toll free numbers.] A telecommunications device for hearing- and speech-impaired persons (TTY) is available by calling the Federal Information Relay Service's toll-free telephone number (800) 877–8339.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that HUD proposes to establish a new system of records identified as the Office of General Counsel E–Discovery Management System notice. The system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Government Reform pursuant to Paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: June 27, 2012.

Kevin R. Cooke,

Deputy Chief Information Officer.

OGC.CAGC.01

SYSTEM NAME:

Office General Counsel Electronic Discovery Management System.

SYSTEM LOCATIONS:

The Electronic Discovery Management System (EDMS) application will be stored on servers located at 4701 Forbes Boulevard, Lanham, MD 20706 and on HUD workstations at 451 Seventh Street SW., Washington, DC 20410. Custodian data to be retrieved is stored on servers and HUD Field Office workstations located throughout the country. (See also on HUD's privacy Web site, Appendix II for the addresses of the Field Offices where Privacy Act records may in some cases be maintained or accessed.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The federal regulation(s)/statute(s) that gives OGC the authority to collect and store this information is Federal Rules of Civil Procedure (FRCP) 16(b) which allows the court to establish rules around disclosure, privilege, methods and work product prior to electronic discovery commencing. In this context, disclosure is the collection of data. Other relevant regulations surrounding the collection and management of electronic discovery are FRCP 26(f), 26(b)(2), 26(b)(5)(B), 33(d), 34(a), 34(b), 37(f), and 45.

PURPOSES:

The Office of General Counsel (OGC) Electronic Discovery Management System (EDMS) provides OGC with a method to initiate, track, and manage the collection, organization, and production of paper and electronic documents for discovery requests, such as litigation hold memoranda, E–Discovery certifications, ESI search requests, closure letters, and any other documents and data relevant to the discovery process requiring analysis, review, redaction, and production to respond to litigation discovery requirements. The purpose of this system is to assist HUD to collect electronically stored information and data of any individual who is, or will be, in litigation with the Department, as well as the attorneys representing the plaintiff(s) and defendant(s) in response to claims by employees, former employees, and other individuals; to assist in the settlement of claims against the government; to represent HUD during litigation, and to maintain internal statistics. A new software component is being added to HUD's EDMS process that will streamline the collection, storage, and analysis of case data in response to HUD requests. On December 1, 2006, the Federal Rules of Civil Procedure (FRCP) were amended to create and clarify responsibility for preserving and accessing electronically stored information (ESI). The obligation to preserve ESI, as well as paper records, begins when an individual ''reasonably anticipates'' litigation and concludes that the evidence may be relevant to such future litigation. Once an individual reasonably anticipates litigation, he/she must suspend any document alteration or destruction to ensure the preservation of relevant documents and electronically stored information, including emails. EDMS and its various capabilities will allow OGC to streamline and automate the document and data reviews it conducts, allow the attorneys to analyze the information in different formats, conduct the analysis in bulk more efficiently, and to protect unwarranted disclosure of information by flagging files that contain information therein that is protected from disclosure.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: (1) All persons subject to a litigation hold due to a ''reasonable anticipation of litigation'' as determined by HUD/HUD's Office of General Counsel; (2) All persons deemed a participant of past or present litigation, investigations, or arbitration where the Department of HUD is involved; (3) Specified parties in litigation and cases in Department of HUD—Office of General Counsel.

Individuals covered by the system include individuals who either file administrative complaints with HUD or are the subject administrative complaints initiated by HUD, individuals who are named parties in cases in which HUD believes it will or may become involved, matters within the jurisdiction of the Department either as plaintiffs or as defendants in both civil and criminal matters, witnesses, and to the extent not covered by any other system, tort and property claimants who have filed claims against the Government and individuals who are subject of an action requiring approval or action by a HUD official, such as appeals, actions, training, awards, promotions, selections, grievances and delegations, including the OGC attorneys to whom cases are assigned, and attorneys and authorized representatives for whom HUD has received complaints regarding their practices before HUD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include: (1) Custodian name; (2) Custodian work address; (3) Custodian email address, (4) Case Name; (5) Case number; (6) Custodian email data, including messages among other HUD employees and/or personnel of other federal agencies or outside entities, and attachments; (7) Custodian local/shared drive data of information collected or compiled from law enforcement or other agency databases; (8) Spreadsheets including data collections, often including PII and sensitive law enforcement data used to track the process or investigations or focus investigative priorities; including records relating to litigation by or against the U.S. Government (or litigation in which the U.S. Government is not a party, but has an interest) resulting from questions concerning HUD cases and legal actions that the Department either is involved in or in which it believes it will or may become involved; claims by or against the Government, other than litigation cases, arising from a transaction with HUD, and documents related thereto, including demographic information, vouchers, witness statements, legal decisions, and related material pertaining to such claims; investigation reports; legal authority; legal opinions and memoranda; criminal actions; criminal conviction records; claims and records regarding discrimination, including employment and sex discrimination; claims and records regarding the Rehabilitation Act; claims against non-HUD attorneys and/or representatives who engage in unethical activities or exhibit unprofessional behavior; copies of petitions filed with HUD; personnel matters; contracts; foreclosures; actions against HUD officials; records relating to requests for HUD records other than requests under the Freedom of Information Act and the Privacy Act of 1974; testimonies of HUD employees in federal, state, local, or administrative criminal or civil litigation; documentary evidence; supporting documents including the legal and programmatic issues of the case, correspondence, legal opinions and memoranda and related records; State Bar grievance/discipline proceedings records; security clearance information; any type of legal document, including but not limited to complaints, summaries, affidavits, litigation reports, motions, subpoenas, and any other court filing or administrative filing or evidence; employee and former employee ethics question forms and responses; and court transcripts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the records pertain;

2. To the National Archives and Records Administration (NARA) for use in its records management inspections and its role as an Archivist;

3. To the Department of Justice (DOJ) when seeking legal advice for a HUD initiative or in response to DOJ's request for the information, after either HUD or DOJ determine that such information is relevant to DOJ's representatives of the United States or any other component in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which HUD collected the records. HUD on its own may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which HUD collected the records; or to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

4. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation;

5. To contractors, grantees, experts, consultants, and the agents thereof, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for HUD, when necessary to accomplish an agency function related to its system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to HUD officers and employees;

6. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure;

7. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;

8. To a grand jury agent pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand

jury, where the subpoena or request has been specifically approved by a court;

9. To appropriate agencies, entities, and persons when: (a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised; (b) HUD has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

POLICIES FOR STORING, RETRIEVING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Data collected by the Office of General Counsel's E–Discovery Management System is stored electronically in a Storage Area Network/Network Attached. There are no manual records stored or maintained outside the system. Storage at a secure Lockheed Martin facility, and backed up via an Avamar Backup Storage system.

RETRIEVABILITY:

Records will be retrieved by the (1) Custodian name; (2) Work address; (3) Custodian email address; (4) Case name; (5) Case number; (6) Custodian email data; (7) Custodian local drive data; (8) Custodian home/shared drive data; (9) Litigation Hold closures; (10) Litigation hold memoranda; (11) Litigation preservation notices; (12) Litigation hold reminder notices; (13) ESI identification email notifications; (14) E–Discovery notifications data is only accessed by individually assigned legal counsel on a case by case basis.

SAFEGUARDS:

Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who are authorized to access by appropriate security clearances and user ID/password permissions. Only assigned users with a need-to-know are allowed access, on a case-by-case basis after going through HUD's background investigation process.

RETENTION AND DISPOSAL:

When OGC requests a case to be closed after authorization is received, the case and related electronic litigation data is purged electronically. Active case data is held indefinitely. Records Disposition Schedule 2—Legal Records, 2225.6 REV–1, CHG–APPENDIX 2.

SYSTEM MANAGERS AND ADDRESSES:

Office of General Counsel (OGC) Patrina Munson, Supervisory Management Information Specialist, Field Management and IT Division, 1250 Maryland Avenue SW., Suite 200, Washington, DC 20024.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them, or those seeking access to such records, should address inquiries to Donna Staton-Robinson, Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4156, Washington, DC 20410. (Attention: Capitol View Building, 4th Floor) Provide verification of your identity by providing two proofs of official identification. Your verification of identity must include your original signature and must be notarized.

CONTESTING RECORD PROCEDURES:

Procedures for the amendment or correction of records and for applicants who want to appeal initial agency determination appear in 24 CFR Part 16.

(i) In relation to contesting contents of records, the Privacy Act Officer at HUD, 451 Seventh Street SW., Room 4178, Washington, DC 20410; and,

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street SW., Washington, DC 20410.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting:

(i) Contesting contents of records: U.S. Department of Housing and Urban Development, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410;

(ii) Appeals of initial HUD determinations: In relation to contesting contents of records, the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Documents and records in this system originate from HUD and its components, courts, subpoenas, law enforcement agencies, other federal, state, and local agencies, inquiries and/or complaints from witnesses or members of the general public.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

Yes. The Department will be issuing a Final Rule on the exemptions elsewhere in the **Federal Register** concurrent with the publishing of this updated System of Records Notice.

[FR Doc. 2012–17365 Filed 7–16–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Renewal of Information Collection: OMB Control Number 1091–0001, Applicant Background Survey

AGENCY: Office of Civil Rights, Interior.

ACTION: Notice and request for comments.

SUMMARY: Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of Civil Rights, Office of the Secretary, Department of the Interior (DOI) has submitted to OMB for renewal.

DATES: OMB has up to 60 days to approve or disapprove the information collection renewal request, but may respond after 30 days; therefore, public comments should be submitted to OMB by August 16, 2012, in order to be assured of consideration.

ADDRESSES: Send your written comments by facsimile to 202–395–5806 or email (*OIRA_DOCKET@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer (1091–0001). Also, please send a copy of your comments to Department of the Interior, Office of the Secretary, Office of Civil Rights, Attn. Ophelia Anderson, 1849 C St. NW., MS 4309 MIB, Washington, DC 20240. Send any faxed comments to (202) 208–6112, Attn. Ophelia Anderson. Comments may also be emailed to *Ophelia_Anderson@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this information collection or its Applicant Background Survey Form should be directed to U.S. Department of the Interior, Office of the Secretary, Office of Civil Rights, Attn. Ophelia Anderson 1849 C St. NW., MS 4309 MIB, Washington, DC 20240. You may also request additional information by telephone (202) 219–0805, or by email at *Ophelia_Anderson@ios.doi.gov.* You may also review the submitted ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

DOI is below parity with the Relevant Civilian Labor Force representation for many mission critical occupations. The Department's Strategic Human Capital management Plan identifies the job skills that will be needed in its current and future workforce. The job skills it will need are dispersed throughout its eight bureaus and include, among others, making visitors welcome to various facilities, such as parks and refuges, processing permits for a wide variety of uses of the public lands, collecting royalties for minerals extracted from the public lands, rounding-up and adopting-out wild horses and burros found in the west, protecting archeological and cultural resources of the public lands, and enforcing criminal laws of the United States. As a result of this broad spectrum of duties and services, the Department touches the lives of most Americans.

The people who deal with the Department bring with them a wide variety of backgrounds, cultures, and experiences. A diverse workforce enables the Department to provide a measure of understanding to its customers by relating to the diverse background of those customers. By including employees of all backgrounds, all DOI employees gain a measure of knowledge, background, experience, and comfort in serving all of the Department's customers.

In order to determine if there are barriers in our recruitment and selection processes, DOI must track the demographic groups that apply for its jobs. There is no other statistically valid method to make these determinations, and no source of this information other than directly from applicants. The data collected is not provided to selecting officials and plays no part in the merit staffing or the selection processes. The data collected will be used in summary form to determine trends covering the demographic make-up of applicant pools and job selections within a given occupation or organizational group. The records of those applicants not selected are destroyed in accordance with DOI's records management procedures.

II. Data

(1) Title: Applicant Background Survey.

OMB Control Number: 1091–0001.

Current Expiration Date: July 31, 2012.

Type of Review: Information Collection Renewal.

Affected Entities: Applicants for DOI jobs.

Estimated annual number of respondents: 366,680.

Frequency of Response: Once per job application.

(2) Annual reporting and record keeping burden: Average reporting burden per application: 1 minute.

Total annual reporting: 6111 hours.

(3) Description of the need and use of the information: This information is required to obtain the source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of relevant labor pools and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Response is optional. The information is used for evaluating recruitment only, and plays no part in the selection of who is hired.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on April 12, 2012 (77 FR 21992). One comment was received. This notice provides the public with an additional 30 days in which to comment on this information collection activity.

III. Request for Comments

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

All written comments will be available for public inspection in the Main Interior Building, 1849 C Street, NW., Washington, DC during normal business hours, excluding legal holidays. For an appointment to inspect comments, please contact Ophelia Anderson by telephone on (202) 219–0805, or by email at *Ophelia_Anderson@ios.doi.gov.* A valid picture identification is required for entry into the Department of the Interior.

Sharon D. Eller,

Director, Office of Civil Rights, Office of the Secretary.

[FR Doc. 2012–17405 Filed 7–16–12; 8:45 am]

BILLING CODE 4310–RE–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Request for Renewal of Information Collection for Donor Certification Form

AGENCY: Office of Youth, Partnerships and Service, Assistant Secretary—Policy, Management and Budget, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Youth, Partnerships and Service announces that it has submitted a request for renewal of an information collection to the Office of Management and Budget (OMB), and requests public comments on this submission.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by August 16, 2012, in order to be assured of consideration.

ADDRESSES: Send your written comments by facsimile 202–395–5806 or email *(OIRA_DOCKET@omb.eop.gov)* to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer (1090–0009). Also, please send a copy of your comments to Olivia Ferriter, Office of Youth, Partnerships and Service, U.S. Department of the Interior, MS 3530–MIB, 1849 C Street NW., Washington, DC 20240, or send an email to *Olivia_Ferriter@ios.doi.gov.* Additionally, you may fax them to her at 202–208–4867. Individuals providing comments should reference Donor Certification Form.

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection you may call Olivia Ferriter at 202–208–4881 or email her at *Olivia_Ferriter@ios.doi.gov.* You can see the entire information collection request as submitted to OMB at the Web site *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The OMB regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies an information collection activity that the Office of Youth, Partnerships and Service has submitted to OMB for approval for the Department and its bureaus to collect information from proposed donors relative to their relationship(s) with the Department. The Department and its individual bureaus all have gift acceptance authority. In support of the variety of donation authorities in the Department and increasing numbers of donations, it is the policy of the Department to ask those proposing to donate gifts valued at $25,000 or more to provide information regarding their relationship with the Department. The purpose of this policy is to ensure that the acceptance of a gift does not create legal or ethical issues for the Department, its bureaus, or potential donors. The information is gathered through the use of the Donor Certification Form, DI–3680.

If this information were not collected from the prospective donor, the Department would have to collect the information. The information will be scattered throughout the Department. With nine major bureaus, 2,500 locations and 70,000 employees, it is not possible to collect the information about a particular donor in a timely manner to respond to a proposed donation. Having the donor certify his interactions with the Department gives the staff reviewing the proposed donation basic information.

II. Method of Collection

Individuals notifying the Department or one of its bureaus of a proposed offer of a gift valued at $25,000 or higher will be asked to submit a form listing several items of basic information.

(1) *Title:* Donor Certification Form.

Information collected	Reason for collection
Name, and indication whether executing in an individual capacity, or on behalf of an organization.	To identify the donor, and whether the donor is acting individually or on behalf of an organization.
Declaration whether the donor is involved with litigation or controversy with the Department.	To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined.
Declaration whether the donor is engaged in any financial or business relationship with the Department.	To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined.
Declaration whether the donor has been debarred, excluded or disqualified from the nonprocurement common rule, or otherwise declared ineligible from doing business with any Federal government agency.	To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined.
Declaration as to whether the donation is expected to be involved with marketing or advertising.	To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined.
Declaration whether the donor is seeking to attach conditions to the donation.	To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined.
Declaration whether this proposed donation is or is not part of a series of donations to the Department.	To assist the Department in determining the scope and context of the donation, and to assist in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined.
Signature, Printed Name, Date, Organization, Email address, City, State, Zip, and daytime or work phone number.	To establish the contact information of the potential donor, and have the certifier sign the certification form.

Use of the information: The information collected will be used by the Department and its bureaus to assist them in properly considering proposed donations to the Department or to its bureaus in the amount of $25,000 or more. The information on the form, in conjunction with other information which may be known to one or more offices in the Department, will assist the Department in its efforts to maintain its integrity, impartiality, and the confidence of the public, in accepting donations.

III. Data

(1) *Title:* Donor Certification Form.

OMB Control Number: 1090–0009.

Type of Review: Renewal of current information collection approval.

Affected Entities: Individuals, Businesses, Not-for-profit institutions, Tribal Governments.

Estimated annual number of respondents: 552.

Frequency of response: Upon donation, generally no more than annual.

(2) *Annual reporting and record keeping burden:*

Estimated number of responses annually: 552.

Estimated burden per response: 20 minutes.

Total annual reporting burden: 184 hours.

(3) *Description of the need and use of the information:* This information provides Department staff with the basis for beginning the evaluation as to whether the Department will accept the proposed donation. The authorized employee will receive the donor certification form with the proposed donation. The employee will then review the totality of circumstances surrounding the proposed donation to determine whether the Department can accept the donation and maintain its integrity, impartiality, and public confidence.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on March 28, 2012 (77 FR 18850). No comments were received. This notice provides the public with an additional 30 days in which to comment on the proposed renewal of this information collection activity.

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments, with names and addresses, will be available for public inspection. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law. If you wish to view any comments received, you may do so by scheduling an appointment with the Office of Youth, Partnerships and Service at the above address. A valid picture identification is required for entry into the Department of the Interior.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Olivia Ferriter,

Office of Youth, Partnerships and Service.

[FR Doc. 2012–17407 Filed 7–16–12; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO3200000–L19900000.PP0000]

Revision of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to revise the collection of information from mining claimants who seek a waiver from annual maintenance fees. This information collection activity is part of a collection that the Office of Management and Budget (OMB) has previously approved under the control number 1004–0114.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration, written comments should be received on or before August 16, 2012.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0114), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0114'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, at 202–912–7123. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Ms. Santillan. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on May 20, 2011 (76 FR 26263), and the comment period ended July 19, 2011. The BLM received no comments. The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0114 in your correspondence. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Recordation of Location Notices and Mining Claims; Payment of Fees.

Form: Form No. 3830–4, Affidavit of Annual Assessment Work.

OMB Control Number: 1004–0114.

Abstract: The Bureau of Land Management (BLM) requests revision of control number 1004–0114 for proposed Form 3830–4, Affidavit of Annual Assessment Work. The proposed form would be part of the currently approved collection activity titled ''Annual FLPMA Documents,'' and would not change the requirements or the estimated burdens, except for updates of the number of responses and associated hour burdens. The burdens shown below are only for the activity titled, ''Annual FLPMA Documents.''

Frequency: Annually.

Estimated Number and Description of Respondents Annually: 6,316 mining claimants who seek a waiver from annual maintenance fees.

Estimated Reporting and Recordkeeping ''Hour'' Burden Annually: 3,158 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden Annually: $63,160.

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2012–17384 Filed 7–16–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000: HAG12–0227]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 41 S., Rs. 42 and 43 E., accepted June 22, 2012
T. 34 S., R. 5 W., accepted June 22, 2012
T. 41 S., R. 4 E., accepted June 22, 2012
T. 16 S., R. 1 W., accepted June 22, 2012
T. 9 S., R. 7 W., accepted July 2, 2012
T. 7 S., R. 7 W. accepted July 2, 2012
T. 25 S., R. 13 W., accepted July 6, 2012
T. 20 S., R. 9 W., accepted July 2, 2012

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Timothy J. Moore,

Acting Chief, Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2012–17387 Filed 7–16–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF LABOR

Employment and Training Administration

TA–W–81,263, Chartis Global Services, Inc., a Subsidiary of Chartis, Inc., Regional Processing Organization, Regional Service Center, Houston, TX; TA–W–81,263A, Chartis Global Services, Inc., a Subsidiary of Chartis, Inc., Regional Processing Organization, Regional Service Center, Dallas, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 13, 2012, applicable to workers of Chartis Global Services, Inc., Regional Service Center, a subsidiary of Chartis, Inc., Houston, Texas. The Department's Notice of determination was published in the **Federal Register** on February 28, 2012 (77 FR 13352). The subject workers are engaged in activities related to the supply of underwriting services. Specifically, these services include reservation, policy issuance, fulfillment, mid-term servicing and file management.

During the course of the investigation of another petition, the Department reviewed the certification applicable to workers and former workers of the subject firm. The review revealed that the Regional Service Center is part of the Regional Processing Organization and that workers and former workers at an affiliated facility in Dallas, Texas operated in conjunction with the Houston, Texas facility and were similarly affected by the workers' firm's shift to a foreign country the supply of services like or directly competitive with the insurance writing support services supplied by the Regional Service Center.

In order to properly identify the worker group and to capture the entirety of the affected worker group, the Department is amending the certification (TA–W–81,263) to add ''Regional Processing Organization'' and to add workers at an affiliated location in Dallas, Texas (TA–W–81,263A). The amended notice applicable to TA–W–81,263 is hereby issued as follows:

All workers of Chartis Global Services, Inc., a subsidiary of Chartis, Inc., Regional Processing Organization, Regional Service Center, Houston, Texas (TA–W–81,263) and Chartis Global Services, Inc., a subsidiary of Chartis, Inc., Regional Processing Organization, Regional Service Center, Dallas, Texas (TA–W–81,263A), who became totally or partially separated from employment on or after February 13, 2012 through February 13, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 29th day of June 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–17375 Filed 7–16–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0030]

Proposed Extension of Existing Information Collection; Main Fan Operation and Inspection in Gassy Underground Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 57.22204. OMB last approved this information collection request on January 8, 2010. The package expires on January 31, 2013.

DATES: All comments must be postmarked or received by midnight Eastern Time on September 17, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with ''OMB 1219–0030'' and sent to the Mine Safety and Health Administration (MSHA). Comments may be sent by any of the methods listed below.

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Facsimile:* 202–693–9441, include ''OMB 1219–0030'' in the subject line of the message.

• *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Potentially gassy (explosive) conditions in underground metal and nonmetal mines are largely controlled by the main mine fans. When accumulations of explosive gases, such as methane, are not swept from the mine by the main fans, they may reasonably be expected to contact an ignition source. The results of such contacts are usually disastrous, and multiple fatalities may be reasonably expected to occur. The standard contains significantly more stringent requirements for main fans in ''gassy'' mines than for main fans in other mines. 30 CFR 57.22204, which only applies to metal and nonmetal underground mines that are categorized as ''gassy,'' requires main fans to have pressure-recording systems. This standard also requires main fans to be inspected daily while operating if persons are underground and certification made of such inspections by signature and date. Certifications and pressure recordings are to be retained for one year and made available to authorized representatives of the Secretary.

This information collection addresses the recordkeeping associated with 30 CFR 57.22204.

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to this safety standard on main fan operation and inspection in gassy underground metal and nonmetal mines. MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

• Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses) to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements.* The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with this safety standard. MSHA has updated the data in respect to the number of respondents and responses, as well as the total burden hours and total annual cost burden supporting this information collection extension request.

Summary

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Main Fan Operation and Inspection in Gassy Underground Metal and Nonmetal Mines.

OMB Number: 1219–0030.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 57.22204.

Total Number of Respondents: 7.

Frequency: Daily.

Total Number of Responses: 6,930.

Total Burden Hours: 2,386 hours.

Other Cost Burden: $2,800.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: July 12, 2012.

George F. Triebsch,

Certifying Officer.

[FR Doc. 2012–17341 Filed 7–16–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before August 16, 2012.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket No: M–2012–131–C.

Petitioner: Blue Diamond Coal Company of Virginia (Previously Wolfpen Mining, LLC), Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Mine No. 1, MSHA I.D. No. 46–09084, located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed.

When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–132–C.

Petitioner: Blue Diamond Coal Company of Virginia, (Previously Wolfpen Mining, LLC), Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Mine No. 1, MSHA I.D. No. 46–09084, located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plan, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

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Petitioner: Blue Diamond Coal Company of Virginia, (Previously Wolfpen Mining, LLC), Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Mine No. 1, MSHA I.D. No. 46–09084, located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the

complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

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(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket No: M–2012–134–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Robinson Run No. 95 Mine, MSHA I.D. No. 46–01318, located in Marion County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

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The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

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Mine: Robinson Run No. 95 Mine, MSHA I.D. No. 46–01318, located in Marion County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

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Docket Number: M–2012–136–C.

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Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. THe petitioner states that:

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(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket No: M–2012–137–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Blacksville No. 2 Mine, MSHA I.D. No. 46–01968, located in Monongalia County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–138–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Blacksville No. 2 Mine, MSHA I.D. No. 46–01968, located in Monongalia County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–139–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Blacksville No. 2 Mine, MSHA I.D. No. 46–01968, located in Marion County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket No: M–2012–140–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Emery Mine, MSHA I.D. No. 42–00079, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–141–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Emery Mine, MSHA I.D. No. 42–00079, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–142–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Emery Mine, MSHA I.D. No. 42–00079, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket No: M–2012–143–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite

1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Loveridge No. 22 Mine, MSHA I.D. No. 46–01433, located in Marion County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–144–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Loveridge No. 22 Mine, MSHA I.D. No. 42–01433, located in Marion County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–145–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Loveridge No. 22 Mine, MSHA I.D. No. 46–01433, located in Marion County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket No: M–2012–146–C.

Petitioner: McElroy Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: McElroy Mine, MSHA I.D. No. 46–01437, located in Marshall County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–147–C.

Petitioner: McElroy Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: McElroy Mine, MSHA I.D. No. 46–01437, located in Marshall County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–148–C.

Petitioner: McElroy Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: McElroy Mine, MSHA I.D. No. 46–01437, located in Marshall County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Dated: July 12, 2012.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2012–17342 Filed 7–16–12; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: Tuesday, July 31, 2012, 9:30 a.m.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The ONE item is open to the public.

MATTERS TO BE CONSIDERED:

8333A Highway Accident Report—Motorcoach Roadway Departure and Overturn on Interstate 95 near Doswell, Virginia, May 31, 2011

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, July 24, 2012.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates including weather-related cancellations are also available at *www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov.*

NEWS MEDIA CONTACT: Nicholas Worrell (202) 314–6608 or by email at *nicholas.worrell@ntsb.gov.*

Dated: Friday, July 13, 2012.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012–17528 Filed 7–13–12; 4:15 pm]

BILLING CODE 7533–01–P

POSTAL SERVICE

Product Change—Every Door Direct Mail—Retail

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service hereby provides notice of filing of a request with the Postal Regulatory Commission to add Every Door Direct Mail—Retail to the market-dominant product list within the Mail Classification Schedule.

DATES: *Effective Date:* July 17, 2012.

FOR FURTHER INFORMATION CONTACT: David Rubin, 202–268–2986.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on July 10, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Every Door Direct Mail—Retail to the Mail Classification Schedule,* pursuant to 39 U.S.C. 3642. Documents are available at *www.prc.gov,* Docket No. MC2012–31.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–17300 Filed 7–16–12; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30134; 812–14005]

AmericaFirst Quantitative Trust and AmericaFirst Securities, Inc.; Notice of Application

July 10, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d) and 26(a)(2)(C) of the Act and rules 19b–1 and rule 22c–1 thereunder and (b) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges.

APPLICANTS: AmericaFirst Quantitative Trust (the ''AmericaFirst Trust'') and AmericaFirst Securities, Inc. (''AFSI'').[1]

SUMMARY OF APPLICATION: Applicants request an order to permit certain unit investment trusts to: (a) impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (b) offer unitholders certain exchange and rollover options; (c) publicly offer units without requiring the Depositor to take for its own account $100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

FILING DATES: The application was filed on February 2, 2012, and amended on February 7, 2012, June 25, 2012 and June 26, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 3, 2012, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 8150 Sierra College Blvd., Suite 290, Roseville, CA 95661.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The AmericaFirst Trust is a unit investment trust (''UIT'') that is registered under the Act. Any future Trust will be a registered UIT. AFSI will be registered under the Securities Exchange Act of 1934 as a broker-dealer and is the Depositor of the AmericaFirst Trust. Each Series will be created by a trust indenture between the Depositor and a banking institution or trust company as trustee (''Trustee'').

2. The Depositor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the Series' portfolio (''Units''). The Units are offered to the public through the Depositor and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities, or, the aggregate offering side evaluation of the underlying securities if the underlying securities are not listed on a securities exchange, plus a front-end sales charge. The maximum sales charge may be reduced in compliance with rule 22d–1 under the Act in certain circumstances, which are disclosed in the Series' prospectus.

3. The Depositor is not legally obligated, and does not currently intend, to maintain a secondary market for Units of outstanding equity Series, but may seek to do so in the future. Other broker-dealers may or may not maintain a secondary market for Units of a Series. If a secondary market is maintained, investors will be able to purchase Units on the secondary market at the current public offering price plus a front-end sales charge. If such a market is not maintained at any time for any Series, holders of the Units (''Unitholders'') of that Series may redeem their Units through the Trustee.

A. Deferred Sales Charge and Waiver of Deferred Sales Charge Under Certain Circumstances

1. Applicants request an order to the extent necessary to permit one or more Series to impose a sales charge on a deferred basis (''DSC''). For each Series, the Depositor would set a maximum sales charge per Unit, a portion of which may be collected ''up front'' (i.e., at the time an investor purchases the Units). The DSC would be collected subsequently in installments (''Installment Payments'') as described in the application. The Depositor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. When a Unitholder redeems or sells Units, the Depositor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the amount due, the Depositor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Depositor will assume that the Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Depositor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in

[1] Applicants also request relief for future unit investment trusts (collectively, with the AmericaFirst Trust, the ''Trusts'') and series of the Trusts (''Series'') for which AFSI or any entity controlling, controlled by or under common control with AFSI (together with AFSI, the ''Depositors'') serves as Depositor. Any future Trust and Series that relies on the requested order will comply with the terms and conditions of the application. All existing entities that currently intend to rely on the requested order are named as applicants.

accordance with rule 22d–1 under the Act.

3. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for such Series will include the table required by Form N–1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment, along with the duration of the collection period. The prospectus also will disclose that portfolio securities may be sold to pay the DSC if distribution income is insufficient and that securities will be sold pro rata, if practicable, otherwise a specific security will be designated for sale.

B. Exchange Option and Rollover Option

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units of another Series (''Exchange Option'') and Unitholders of a Series that is terminating to exchange their Units for Units of a new Series of the same type (''Rollover Option''). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge or DSC.

2. A Unitholder who purchases Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Depositor and participating underwriters and brokers for their services in providing the DSC program.

Applicants' Legal Analysis

A. DSC and Waiver of DSC

1. Section 4(2) of the Act defines a ''unit investment trust'' as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a ''redeemable security'' as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c–1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value (''NAV''). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) of the Act and rule 22d–1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales load. Section 2(a)(35) of the Act defines the term ''sales load'' as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from section 2(a)(35) and section 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (a) riskless trading in investment company securities due to backward pricing, (b) disruption of orderly distribution by dealers selling shares at a discount, and (c) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d–1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Depositor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Trustee to collect Installment Payments and disburse them to the Depositor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

B. Exchange Option and Rollover Option

1. Sections 11(a) and 11(c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Option and the Rollover Option.

C. Net Worth Requirement

1. Section 14(a) of the Act requires that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants state that each Series will comply with this requirement because the Depositor will deposit more than $100,000 of securities. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Depositor's intention to sell all the Units of the Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in ''eligible trust securities,'' as defined in the rule. Applicants state that they may not rely on rule 14a–3 because certain Series (collectively, ''Equity Series'') will invest all or a portion of their assets in equity securities or shares of registered investment companies which do not satisfy the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) of the Act to the extent necessary to exempt the Equity Series from the net worth requirement in section 14(a). Applicants state that the Series and the Depositor will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

D. Capital Gains Distribution

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, exempts a UIT investing in eligible trust securities (as defined in rule 14a–3) from the requirements of rule 19b–1.

Because the Equity Series do not limit their investments to eligible trust securities, however, the Equity Series will not qualify for the exemption in paragraph (c) of rule 19b–1. Applicants therefore request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b–1.

2. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Trust expenses, Installment Payments, or by redemption requests, events over which the Depositor and the Equity Series do not have control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. DSC Relief and Exchange and Rollover Options

1. Whenever the Exchange Option or the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or the Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or Rollover Option will disclose that the Exchange Option and the Rollover Option are subject to modification, termination or suspension without notice, except in certain limited cases.

4. Any DSC imposed on a Series' Units will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c–10(a) under the Act.

5. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required by Form N–1A relating to deferred sales charges (modified as appropriate to reflect the differences between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment.

B. Net Worth Requirement

1. Applicants will comply in all respects with the requirements of rule 14a–3 under the Act, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17336 Filed 7–16–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, July 19, 2012 at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(2), (3), (5), (6), (7), 9(B) and (10) and 17 CFR 200.402(a)(2), (3), (5), (6), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, July 19, 2012 will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
A litigation matter;
An adjudicatory matter; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: July 12, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–17422 Filed 7–13–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67414; File No. SR–BX–2012–050]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rule 4751(f)(7) Concerning the Processing of the Price To Comply Order

July 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2012, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify how the processing of a Price to Comply Order under Rule 4751(f)(7) operates based on the method of entry.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on the Exchange or another national securities exchange.

(a)–(e)

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(6) No change.

(7) ''Price to Comply Order'' are orders that, if, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order entered through an OUCH port *that crosses the market will* [may] be adjusted once *and, depending on the election of the member firm, either rest on the book* or [multiple times depending upon the election of the member firm and changes to the prevailing NBBO] *be canceled if the previously-locking price becomes available. The displayed and undisplayed prices of a Price to Comply order entered through an OUCH port that locks the market will be adjusted once and, depending on the election of the member firm, either rest on the book, be canceled, or adjusted a second time if the previously-locking price becomes available.* The displayed and undisplayed prices of a Price to Comply order entered through a RASH port may be adjusted multiple times, depending upon changes to the prevailing NBBO.

(8)–(10) No change.

(g)–(j) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is proposing to modify how OUCH port-entered Price to Comply Orders[3] will operate. Price to Comply Orders, as described in Rule 4751(f)(7), allow member firms to quote aggressively and still comply with the locked and crossed markets provisions of Regulation NMS.[4] BX recently amended Rule 4751(f)(7) to clarify the effect that the methods of order entry have on the processing of Price to Comply Orders.[5] The rule change clarified that OUCH port-entered Price to Comply Orders are now eligible for price adjustment either once or multiple times, depending on the election of the member firm.[6] The Exchange noted in the rule change that offering OUCH port users the ability to have BX reprice a Price to Comply Order multiple times will serve to reduce the excessive volume of orders entered into the System[7] and ultimately canceled.[8] Accordingly, a Price to Comply Order entered through an OUCH port that a member firm has designated for multiple price adjustment will be adjusted more than once in response to changes in the prevailing National Best Bid and Offer (''NBBO'') to move the displayed price closer to the original entered price and display the best possible price consistent with the provisions of Regulation NMS. Prior to the clarifying rule change, OUCH port-entered Price to Comply Orders that would lock or cross the market would be adjusted once and thereafter rest on the book. The Exchange has not implemented the recently-adopted changes[9] so that it could subsequently modify how the OUCH port-entered Price to Comply Orders will operate under Rule 4751(f)(7), as described below.

The Exchange has determined to modify Rule 4751(f)(7) so that a Price to Comply Order entered via an OUCH port designated for multiple price adjustment that would lock the market can be adjusted a maximum of two times—once upon entry and once again to move the displayed price to the original entered price when it becomes permissible under Regulation NMS to do so, thereby displaying the best possible price consistent with the provisions of Regulation NMS. Under the proposed rule change, such Price to Comply Orders that would cross the market upon entry would be price adjusted once upon entry to display at a permissible level and thereafter cancelled when the previously locking level becomes available. This cancellation allows the member to resubmit its order at a price more aggressive than the previously locking price should the member still desire to do so.[10] As such, and unlike as described in the recent rule change, the process applied to OUCH ports designated for multiple price adjustment will be similar to, yet different than, the process applied to RASH-entered Price to Comply Orders.

BX is not changing how Price to Comply Orders entered via an OUCH port not designated for multiple price adjustment operate. Such orders will continue to be adjusted once and thereafter remain on the book. Likewise, BX is not proposing to change how price adjusted orders are treated in terms of priority. Like RASH-entered Price to Comply Orders, each time the OUCH-entered order is price adjusted it will receive a new timestamp for purposes of determining its price/display/time priority.[11] As such, an OUCH-entered Price to Comply Order that is repriced upon entry will initially be prioritized among non-displayed orders at the

[3] ''Price to Comply Order'' is an order such that, if, at the time of entry, it would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers).

[4] 17 CFR 242.610.

[5] *See* Securities Exchange Act Release No. 67025 (May 18, 2012), 77 FR 31413 (May 25, 2012) (SR–BX–2012–032).

[6] Member firms must designate each OUCH protocol order port that it wishes to use with the multiple price adjustment functionality, and such ports will also be designated for automatic cancellation or ''kick out'' of other order types whose price was adjusted upon entry to prevent a violation of Rule 610(d) of Regulation NMS. In the absence of designation from a member firm, the Exchange will default the member's OUCH port(s) to single price adjustment.

[7] As defined by Rule 4751(a).

[8] The Exchange noted that the OUCH protocol is used by member firms that are able to submit a large volume of orders. Such member firm will often submit a Price to Comply Order at an aggressive price that it anticipates will be at the NBBO, but it is not submitted at the NBBO and is not executed after repricing because the market does not move to the adjusted order price. In such cases, the member firm will typically submit additional aggressive orders, which likewise are not executed. *Supra* note 5.

[9] *Supra* note 5.

[10] Similarly, orders other than Price to Comply Orders that are re-priced on entry due to Regulation NMS and submitted via OUCH ports designated for multiple price adjustment of Price to Comply Orders will be cancelled when the previously locking price level becomes available.

[11] As described in Rule 4757(a)(1).

locking price based on its time of entry. Upon the second repricing of an OUCH-entered Price to Comply Order that is entered at a locking price, the order will be prioritized among displayed orders at the previously locking price based on its time of repricing and thus is treated as a new displayed order in terms of priority. There is no guarantee that the OUCH-entered Price to Comply Order will receive priority amongst displayed orders when it becomes actionable after repricing, as other displayed orders may be entered before the Price to Comply Order is repriced. This priority treatment is identical to the treatment provided to RASH-entered Price to Comply Orders that are price adjusted. The Exchange will provide public notice five business days prior to the implementation date of the changes proposed herein, together with the changes proposed in the recent rule filing [12] not modified by this proposal, and such implementation date will be no later than thirty calendar days from the date of filing this proposal with the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and with Section 6(b)(5) of the Act [14] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes this proposal is consistent with the Exchange Act and, specifically, Rules 610 and 611 of Regulation NMS in that it is designed to prevent orders from locking and crossing the market or trading through protected quotes, while also promoting a more efficient market. In this regard, the Exchange believes that the proposed rule change will promote the efficient use of the Exchange by reducing the number of orders entered into the market and ultimately canceled. The proposed rule change will accomplish this by providing the member firms that tend to enter the greatest number of such orders via OUCH ports an option to have the Exchange reprice two times a single order that would lock the market upon entry. The Exchange also believes that permitting a high volume user the option to continue to have the Exchange reprice its Price to Comply Order only upon order entry, when appropriate, will ensure member firms with internal systems that act in reliance on this function will continue to operate without disruption.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–050. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2012–050 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17335 Filed 7–16–12; 8:45 am]

BILLING CODE 8011–01–P

[12] *Supra* note 5.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67412; File No. SR–Phlx–2012–91]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to PSX Rule 3301(f)(8) Concerning the Processing of the Price To Comply Order

July 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify how the processing of a Price to Comply Order under PSX Rule 3301(f)(8) operates based on the method of entry.

The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

3301. Definitions

The following definitions apply to the Rule 3200 and 3300 Series for the trading of securities on PSX.

(a)–(e)

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(7) No change.

(8) ''Price to Comply Order'' are orders that, if, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order entered through an OUCH port *that crosses the market will* [may] be adjusted once *and, depending on the election of the member firm, either rest on the book* or [multiple times depending upon the election of the member firm and changes to the prevailing NBBO] *be canceled if the previously-locking price becomes available. The displayed and undisplayed prices of a Price to Comply order entered through an OUCH port that locks the market will be adjusted once and, depending on the election of the member firm, either rest on the book, be canceled, or adjusted a second time if the previously-locking price becomes available.*The displayed and undisplayed prices of a Price to Comply order entered through a RASH port may be adjusted multiple times, depending upon changes to the prevailing NBBO.

(9)–(11) No change.

(g)–(i) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx is proposing to modify how OUCH port-entered Price to Comply Orders[3] will operate. Price to Comply Orders, as described in PSX Rule 3301(f)(8), allow member firms to quote aggressively and still comply with the locked and crossed markets provisions of Regulation NMS.[4] Phlx recently amended PSX Rule 3301(f)(8) to clarify the effect that the methods of order entry have on the processing of Price to Comply Orders.[5] The rule change clarified that OUCH port-entered Price to Comply Orders are now eligible for price adjustment either once or multiple times, depending on the election of the member firm.[6] The Exchange noted in the rule change that offering OUCH port users the ability to have Phlx reprice a Price to Comply Order multiple times will serve to reduce the excessive volume of orders entered into the System[7] and ultimately canceled.[8] Accordingly, a Price to Comply Order entered through an OUCH port that a member firm has designated for multiple price adjustment will be adjusted more than once in response to changes in the prevailing National Best Bid and Offer (''NBBO'') to move the displayed price closer to the original entered price and display the best possible price consistent with the provisions of Regulation NMS. Prior to the clarifying rule change, OUCH port-entered Price to Comply Orders that would lock or cross the market would be adjusted once and thereafter rest on the book. The Exchange has not implemented the recently-adopted changes[9] so that it could subsequently modify how the OUCH port-entered Price to Comply Orders will operate under PSX Rule 3301(f)(8), as described below.

The Exchange has determined to modify PSX Rule 3301(f)(8) so that a Price to Comply Order entered via an OUCH port designated for multiple price adjustment that would lock the market can be adjusted a maximum of two times—once upon entry and once again to move the displayed price to the original entered price when it becomes permissible under Regulation NMS to do so, thereby displaying the best possible price consistent with the provisions of Regulation NMS. Under the proposed rule change, such Price to Comply Orders that would cross the market upon entry would be price adjusted once upon entry to display at a permissible level and thereafter

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Price to Comply Order'' is an order such that, if, at the time of entry, it would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers).

[4] 17 CFR 242.610.

[5] *See* Securities Exchange Act Release No. 66992 (May 15, 2012), 77 FR 30038 (May 21, 2012) (SR–Phlx–2012–62).

[6] Member firms must designate each OUCH protocol order port that it wishes to use with the multiple price adjustment functionality, and such ports will also be designated for automatic cancellation or ''kick out'' of other order types whose price was adjusted upon entry to prevent a violation of Rule 610(d) of Regulation NMS. In the absence of designation from a member firm, the Exchange will default the member's OUCH port(s) to single price adjustment.

[7] As defined by PSX Rule 3301(a).

[8] The Exchange noted that the OUCH protocol is used by member firms that are able to submit a large volume of orders. Such member firm will often submit a Price to Comply Order at an aggressive price that it anticipates will be at the NBBO, but it is not submitted at the NBBO and is not executed after repricing because the market does not move to the adjusted order price. In such cases, the member firm will typically submit additional aggressive orders, which likewise are not executed. *Supra* note 5.

[9] *Supra* note 5.

cancelled when the previously locking level becomes available. This cancellation allows the member to resubmit its order at a price more aggressive than the previously locking price should the member still desire to do so.[10] As such, and unlike as described in the recent rule change, the process applied to OUCH ports designated for multiple price adjustment will be similar to, yet different than, the process applied to RASH-entered Price to Comply Orders.

Phlx is not changing how Price to Comply Orders entered via an OUCH port not designated for multiple price adjustment operate. Such orders will continue to be adjusted once and thereafter remain on the book. Likewise, Phlx is not proposing to change how price adjusted orders are treated in terms of priority. Like RASH-entered Price to Comply Orders, each time the OUCH-entered order is price adjusted it will receive a new timestamp for purposes of determining its price/display/time priority.[11] As such, an OUCH-entered Price to Comply Order that is repriced upon entry will initially be prioritized among non-displayed orders at the locking price based on its time of entry. Upon the second repricing of an OUCH-entered Price to Comply Order that is entered at a locking price, the order will be prioritized among displayed orders at the previously locking price based on its time of repricing and thus is treated as a new displayed order in terms of priority. There is no guarantee that the OUCH-entered Price to Comply Order will receive priority amongst displayed orders when it becomes actionable after repricing, as other displayed orders may be entered before the Price to Comply Order is repriced. This priority treatment is identical to the treatment provided to RASH-entered Price to Comply Orders that are price adjusted. The Exchange will provide public notice five business days prior to the implementation date of the changes proposed herein, together with the changes proposed in the recent rule filing [12] not modified by this proposal, and such implementation date will be no later than thirty calendar days from the date of filing this proposal with the Commission.

[10] Similarly, orders other than Price to Comply Orders that are re-priced on entry due to Regulation NMS and submitted via OUCH ports designated for multiple price adjustment of Price to Comply Orders will be cancelled when the previously locking price level becomes available.

[11] As described in PSX Rule 3307(a)(1).

[12] *Supra* note 5.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and with Section 6(b)(5) of the Act [14] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes this proposal is consistent with the Exchange Act and, specifically, Rules 610 and 611 of Regulation NMS in that it is designed to prevent orders from locking and crossing the market or trading through protected quotes, while also promoting a more efficient market. In this regard, the Exchange believes that the proposed rule change will promote the efficient use of the Exchange by reducing the number of orders entered into the market and ultimately canceled. The proposed rule change will accomplish this by providing the member firms that tend to enter the greatest number of such orders via OUCH ports an option to have the Exchange reprice two times a single order that would lock the market upon entry. The Exchange also believes that permitting a high volume user the option to continue to have the Exchange reprice its Price to Comply Order only upon order entry, when appropriate, will ensure member firms with internal systems that act in reliance on this function will continue to operate without disruption.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–91 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–91. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(6).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2012–91 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17334 Filed 7–16–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67408; File No. SR–NYSE–2012–22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes to the Transaction Fees and Credits Within Its Price List

July 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 29, 2012, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes certain changes to the transaction fees and credits within its Price List, which the Exchange proposes to become operative on July 1, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing certain changes to the transaction fees and credits within its Price List, which the Exchange proposes to become operative on July 1, 2012.

The Exchange recently amended Rule 107B, which currently operates on a pilot basis,[3] to add a class of Supplemental Liquidity Providers (''SLPs'') that are registered as market makers at the Exchange (''SLMMs'').[4] SLPs in the original class (''SLP-Props'') are eligible for credits when adding liquidity on the Exchange. The amount of the credit is determined by the ''tier'' for which the SLP-Prop qualifies, which is based on (i) whether the SLP-Prop meets the 10% average or more quoting requirement in all assigned securities pursuant to Rule 107B; and (ii) whether the SLP-Prop (a) adds liquidity of an average daily volume (''ADV'') of more than 10 million shares for all assigned SLP securities in the aggregate; and (b) for each assigned SLP security, adds liquidity within a specified range of percentages of consolidated ADV (''CADV'') for that security.

The Exchange hereby proposes that transaction credits for SLMMs would be identical to those that are applicable to SLP-Props, both with respect to the rate of the credit and the qualification requirements for the tiers. The Exchange also proposes to specify that, for purposes of determining whether an SLP has added liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate, shares of an SLP-Prop and an SLMM of the same member organization would be aggregated.[5] The Exchange has proposed this aggregation because, as described in SR–NYSE–2012–10, if a member organization has more than one business unit, and the SLP-Prop business unit is walled off from the SLMM business unit, the member organization may engage in both an SLP-Prop and SLMM business from those different business units.[6] Accordingly, because the 10 million share threshold applies to all of an SLP's shares in the aggregate, the Exchange believes that the activity of an SLP-Prop and an SLMM of the same member organization should be aggregated.[7] However, for purposes of determining whether an SLP has satisfied the 10% average or more quoting requirement pursuant to Rule 107B as well as the per-security percentage of added liquidity, shares of an SLP-Prop and an SLMM of the same member organization would not be aggregated. As described in SR–NYSE–2012–10, provided there is no coordinated trading between the SLP-Prop and SLMM business units, they may be assigned the same securities.[8] In

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108). The pilot is currently scheduled to end on July 31, 2012.

[4] *See* Securities Exchange Act Release No. 67154 (June 7, 2012), 77 FR 35455 (June 13, 2012) (SR–NYSE–2012–10). The Exchange notes that pursuant to SR–NYSE–2012–10 the addition of the SLMM class would not be effective until the first day of the month following Commission approval, which is July 2, 2012.

[5] The Exchange proposes to add ''in the aggregate'' to the $0.0005 tier for securities with a per-share price of less than $1.00 to make this language consistent with the other tiers. This aspect of the proposed rule change would not be a substantive change.

[6] *See supra* note 4 at 35456.

[7] Additionally, this would be consistent with the manner in which the Exchange aggregates the activity of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether the 10 million share requirement of Rule 107B(a) has been satisfied.

[8] *See supra* note 4 at 35456. *See also* Rule 107B(i)(2)(B), which provides that an SLP-Prop shall not also act as an SLMM in the same securities in which it is registered as an SLP-Prop and vice versa, provided, however, that if a member organization maintains information barriers between an SLP-Prop unit and an SLMM unit, the SLP-Prop and SLMM units may be assigned the same securities.

this regard, the Exchange believes that this proposed disaggregation is consistent with the prohibition of an SLP-Prop coordinating its trading with an SLMM of the same member organization, and vice versa.[9]

Accordingly, the credits for SLP-Props and SLMMs would be as follows:

Credit per Share—per transaction—for Supplemental Liquidity Providers (''SLPs'')—when adding liquidity to the NYSE in securities with a per share price of $1.00 or more, if the SLP does not qualify for the higher credit set forth below.	$0.0015; or $0.0010 if a Non-Displayed Reserve Order.
Credit per Share—per transaction—for SLPs—when adding liquidity to the NYSE in securities with a per share price of $1.00 or more, if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B [sic] and (ii) adds liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) and, for each assigned SLP security, adds liquidity of not more than 1.0% of the consolidated ADV for that assigned SLP security in the applicable month (shares of an SLP-Prop and an SLMM of the same member organization shall not be aggregated).	$0.0020; or $0.0015 if a Non-Displayed Reserve Order.
Credit per Share—per transaction—for SLPs—when adding liquidity to the NYSE in securities with a per share price of $1.00 or more, if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B [sic] and (ii) adds liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) and, for each assigned SLP security, adds liquidity of more than 1.0% but not more than 2.5% of the consolidated ADV for that assigned SLP security in the applicable month (shares of an SLP-Prop and an SLMM of the same member organization shall not be aggregated).	$0.0021; or $0.0016 if a Non-Displayed Reserve Order.
Credit per Share—per transaction—for SLPs—when adding liquidity to the NYSE in securities with a per share price of $1.00 or more, if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B [sic] and (ii) adds liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) and, for each assigned SLP security, adds liquidity of more than 2.5% of the consolidated ADV for that assigned SLP security in the applicable month (shares of an SLP-Prop and an SLMM of the same member organization shall not be aggregated).	$0.0024; or $0.0019 if a Non-Displayed Reserve Order.
Credit per Share for SLPs for executions of securities with a per share price of $1.00 or more at the close	None.
Credit per Share—per transaction—for SLPs—when adding liquidity to the NYSE in securities with a per share price of less than $1.00, if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B [sic] and (ii) adds liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) in the applicable month.	$0.0005.

The following example illustrates how the proposed aggregation/disaggregation would operate for a member organization that has separate business units that operate as an SLP-Prop and an SLMM, where the SLP-Prop and SLMM are each assigned securities ABC and XYZ and the following assumptions are made:

- The percentage of time at the NBBO for securities ABC and XYZ during the month is 13% and 11%, respectively for SLP-Prop and 11% and 9%, respectively, for SLMM;
- The ADV of adding liquidity for all assigned securities (i.e., securities ABC and XYZ) during the month is 5 million shares per day for SLP-Prop and 6 million shares per day for SLMM; and
- The adding liquidity in securities ABC and XYZ during the month is 1.5% and 2.6% of CADV, respectively, for SLP-Prop and 0.6% and 1.5% of CADV, respectively, for SLMM.

In this example, the member organization's combined ADV for adding liquidity in all assigned securities is greater than 10 million, which enables both the SLP-Prop and SLMM units of that member organization to qualify for the SLP credit of $0.0020 or more if it meets the individual per security requirements. The SLP-Prop would qualify for a $0.0021 credit per share in security ABC and a $0.0024 credit per share in security XYZ. The SLMM would qualify for a $0.0020 credit per share in security ABC, but only a $0.0015 credit per share in security XYZ because it does not meet the quoting requirements in security XYZ.

Unrelated to the proposed SLMM credits, the Exchange proposes to remove obsolete text from the Price List that states that there is no charge during Crossing Session (''CS'') II, CSIII and CSIV.[10] In this regard, CSIII and CSIV are no longer in effect on the Exchange.[11] Additionally, the Exchange currently charges a fee for executions during CSII.[12] For clarity, the Exchange proposes to move the fee schedule references to CSI and CSII under one heading.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[13] in general, and furthers the objectives of Section 6(b)(4) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities. The proposed rule change is equitably allocated and not unfairly discriminatory because it applies uniformly to all similarly situated member organizations.

Specifically, the Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because the same credits would be made available to SLMMs that are currently available for SLP-Props. In this regard, the proposed SLMM credits are reasonable, equitable and not unfairly discriminatory because they are available to all SLMMs on an equal basis and because the credits would

[9] This also would be consistent with the manner in which the Exchange disaggregates the activity of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether the 10% requirement of Rule 107B(a) has been satisfied.

[10] The Exchange also proposes to designate related footnote 14 in the Price List as ''reserved.''

[11] CSIII and CSIV operated pursuant to a pilot program that ceased operating after it was last extended to February 2009. *See* Securities Exchange Act Release No. 57213 (January 28, 2008), 73 FR 6540 (February 4, 2008) (SR–NYSE–2008–07).

[12] *See* Securities Exchange Act Release No. 62082 (May 11, 2010), 75 FR 27848 (May 18, 2010) (SR–NYSE–2010–34). *See also* Securities Exchange Act Release No. 66600 (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR–NYSE–2012–07).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

provide incentives to SLMMs that are reasonably related to an SLMM's additional quoting and liquidity obligations in each security.

The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to aggregate shares of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether an SLP has added liquidity of an ADV of more than 10 million shares for all assigned SLP securities. Specifically, and as described in SR–NYSE–2012–10, if a member organization has more than one business unit, and the SLP-Prop business unit is walled off from the SLMM business unit, the member organization may engage in both an SLP-Prop and SLMM business from those different business units.[15] Accordingly, because the 10 million share threshold applies to all of an SLP's shares in the aggregate, the Exchange believes that the activity of an SLP-Prop and an SLMM of the same member organization should be aggregated.[16] Furthermore, provided there is no coordinated trading between the SLP-Prop and SLMM business units, they may be assigned the same securities.[17] In this regard, however, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to disaggregate shares of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether an SLP has satisfied the 10% average or more quoting requirement pursuant to Rule 107B as well as the per-security percentage of added liquidity. The Exchange believes that this proposed disaggregation is consistent with the prohibition of an SLP-Prop coordinating its trading with an SLMM of the same member organization, and vice versa.[18]

The Exchange also believes that the removal of the text describing that there is no charge during CSII, CSIII and CSIV and putting the text describing CSI and CSII under one heading is reasonable, equitable and not unfairly discriminatory because it would result in the removal of obsolete text from the Price List and add greater clarity regarding off-hours trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [19] of the Act and subparagraph (f)(2) of Rule 19b–4 [20] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–22 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–22 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17333 Filed 7–16–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67404; File No. SR–ISE–2012–62]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees for Certain Orders Executed on the Exchange

July 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2,

[15] *See supra* note 4 at 35456.

[16] Additionally, this would be consistent with the manner in which the Exchange aggregates the activity of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether the 10 million share requirement of Rule 107B(a) has been satisfied.

[17] *See supra* note 4 at 35456. *See also* Rule 107B(i)(2)(B), which provides that an SLP-Prop shall not also act as an SLMM in the same securities in which it is registered as an SLP-Prop and vice versa, provided, however, if a member organization maintains information barriers between an SLP-Prop unit and an SLMM unit, the SLP-Prop and SLMM units may be assigned the same securities.

[18] Additionally, this would be consistent with the manner in which the Exchange disaggregates the activity of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether the 10% requirement of Rule 107B(a) has been satisfied.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend transaction fees for certain orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses a per contract transaction charge and provides rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in a number of options classes (the ''Select Symbols'').[3] For removing liquidity in the Select Symbols, the Exchange currently charges a ''taker'' fee of: (i) $0.28 per contract for Market Maker[4] and Market Maker Plus orders,[5] and (ii) $0.29 per contract for Firm Proprietary and Customer (Professional)[6] orders. The Exchange now proposes to increase the ''taker'' fee for Market Maker and Market Maker Plus orders in the Select Symbols from $0.28 per contract to $0.29 per contract, and for Firm Proprietary and Customer (Professional) orders in the Select Symbols from $0.29 per contract to $0.30 per contract. The Exchange is not proposing any change to the ''taker'' fee for Non-ISE Market Maker orders or Priority Customer[7] orders in the Select Symbols.

Further, for complex orders in the Select Symbols (excluding SPY), the Exchange currently charges a ''taker'' fee of: (i) $0.34 per contract for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders. The Exchange now proposes to increase the complex order ''taker'' fee for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders in the Select Symbols (excluding SPY) from $0.34 per contract to $0.35 per contract. The Exchange is not proposing any change to the complex order ''taker'' fee for Non-ISE Market Maker orders or Priority Customer orders in the Select Symbols (excluding SPY).

Additionally, the Exchange provides ISE Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. This discount is applicable when ISE Market Makers remove liquidity in the Select Symbols (excluding SPY) from the complex order book. ISE Market Makers that remove liquidity in the Select Symbols (excluding SPY) from the complex order book by trading with Priority Customer orders that are preferenced to them will be charged $0.33 per contract.

The Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in the Select Symbols (excluding SPY) when these orders trade with non-Priority Customer orders in the complex order book. Specifically, the Exchange currently provides a rebate of $0.32 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve certain average daily volume (ADV) of Priority Customer complex order contracts across all symbols executed during a calendar month are provided a rebate of $0.33 per contract per leg in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.34 per contract per leg in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.345 per contract per leg in these symbols, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. The Exchange now proposes to increase the level of rebate for Members who achieve an ADV of 250,000 Priority Customer Complex contracts, from $0.345 per contract per leg to $0.35 per contract per leg.

The Exchange also currently provides volume-based tiered rebates for Priority Customer complex orders in option symbol SPY when these orders trade with non-Priority Customer orders in the complex order book. Specifically, the Exchange currently provides a rebate of $0.33 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in SPY in the complex order book. Additionally, Members who achieve certain ADV of Priority Customer complex order contracts in SPY during a calendar month are provided a rebate of $0.34 per contract per leg, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.35 per contract per leg, if a Member achieves an ADV of 125,000 Priority Customer

[3] Options classes subject to maker/taker fees and rebates are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[5] A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics during that month. A Market Maker's single best and single worst overall quoting days each month, on a per symbol basis, are excluded in calculating whether a Market Maker qualifies for this rebate, if doing so qualifies a Market Maker for the rebate. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

[6] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[7] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

complex order contracts; and $0.355 per contract per leg, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. The Exchange now proposes to increase the level of rebate for Members who achieve an ADV of 250,000 Priority Customer Complex contracts in SPY, from $0.355 per contract per leg to $0.36 per contract per leg.

The Exchange has similar volume-based tiered rebates for Priority Customer complex orders in Non-Select Penny Pilot Symbols when these orders trade with non-Priority Customer orders in the complex order book. Specifically, the Exchange currently provides a rebate of $0.28 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve certain ADV of Priority Customer complex order contracts across all symbols executed during a calendar month are provided a rebate of $0.21 [sic] per contract per leg in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.32 per contract per leg in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.325 per contract per leg in these symbols, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. Again, the highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders in the Non-Select Penny Pilot Symbols that they send to the Exchange, the Exchange now proposes to increase the base amount of the rebate to $0.29 per contract. Additionally, the Exchange proposes to increase the amount of that rebate even further, on a month-by-month and Member-by-Member basis, if such Member achieves an ADV of Priority Customer complex order contracts across all symbols executed during the calendar month, as follows: if the Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount shall be $0.31 per contract per leg; if the Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount shall be $0.33 per contract per leg; and if the Member achieves an ADV of 250,000 Priority Customer complex order contracts, the rebate amount shall be $0.34 per contract per leg.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the ''Act'') [8] in general, and furthers the objectives of Section 6(b)(4) of the Act [9] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Select Symbols.

The Exchange believes that its proposal to assess a $0.29 per contract ''taker'' fee for Market Maker and Market Maker Plus orders in the Select Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, NASDAQ OMX PHLX, Inc. (''PHLX'') currently charges Specialists $0.33 per contract for removing liquidity in symbols that are subject to that exchange's maker/taker fees.[10] Further, the proposed increase will align this fee to the fee the Exchange currently charges to other market participants that employ a similar trading strategy. The Exchange also notes that with this proposed rule change, the fee charged to Market Maker and Market Maker Plus orders will remain lower than the fee currently charged by the Exchange to certain other market participants.

The Exchange also believes that its proposal to assess a $0.30 per contract ''taker'' fee for Firm Proprietary and Customer (Professional) orders in the Select Symbols is reasonable and equitably allocated because the fee is also within the range of fees assessed by other exchanges employing similar pricing schemes. By comparison, the proposed fees assessed to Firm Proprietary and Customer (Professional) orders are lower than the rates assessed by PHLX for similar orders. PHLX currently charges a ''taker'' fee of $0.45 for Firm and Broker-Dealer orders and $0.40 for Professional orders in its regular order book.[11]

The Exchange believes that the price differentiation between the various market participants is justified because Market Makers have obligations to the market that the other market participants do not. The Exchange believes that it is equitable to assess a higher fee to market participants that do not have the quoting requirements that Exchange Market Makers do.

The Exchange believes that its proposal to assess a $0.35 per contract ''taker'' fee for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders in the Select Symbols (excluding SPY) is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes and in some cases, is lower that the fees assessed by other exchanges. For example, PHLX currently charges $0.37 per contract for removing liquidity in complex orders for Specialist orders and $0.38 per contract for Firm and Professional orders.[12] Therefore, while ISE is proposing a fee increase for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders, the resulting fee remains lower than the fee currently charged by PHLX for similar orders.

The Exchange believes that it is reasonable and equitable to provide a two cent discount to Market Makers on preferenced orders as an incentive for them to quote in the complex order book. The Exchange notes that PHLX currently provides a similar discount. Accordingly, Market Makers who remove liquidity in the Select Symbols (excluding SPY) from the complex order book will be charged $0.33 per contract when trading with Priority Customer orders that are preferenced to them. ISE notes that with this proposed fee change, the Exchange will continue to maintain a two cent differential that was previously in place.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* PHLX Fee Schedule at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[11] *Id.*

[12] *Id.*

Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides these types of rebates, and is now merely proposing to increase those rebate amounts. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that this proposed rule change will continue to attract additional complex order business in the symbols that are subject of this proposed rule change.

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to direct their order flow in the symbols that are subject to this proposed rule change as its fees are competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2012–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–62 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17332 Filed 7–16–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67403; File No. SR–ISE–2012–64]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees for Certain Complex Orders Executed on the Exchange

July 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend fees for certain complex orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and rebates to market participants that add or remove liquidity in the complex order book (''maker/taker fees and rebates'') in all symbols traded on the Exchange. The maker/taker fees and rebates apply to Market Maker,[3] Market Maker Plus,[4] Non-ISE Market Maker,[5] Firm Proprietary, Customer (Professional)[6] and Priority Customer[7] orders.

Pursuant to Securities and Exchange Commission (''SEC'') approval, the Exchange currently allows Market Makers to enter quotations for complex order strategies in the complex order book.[8] Given this enhancement to the complex order functionality, and in order to maintain a competitive fee and rebate structure for Priority Customer orders, the Exchange has adopted maker fees that apply to transactions in the complex order book when they interact with Priority Customer orders in options overlying XOP, GLD, VXX, XLB, EFA, AA, ABX, MSFT, MU, NVDA, VZ, and WFC (''Complex Quoting Symbols'').[9] Specifically, the Exchange currently charges a ''maker'' fee of $0.30 per contract in XOP and $0.32 per contract in GLD, VXX, XLB, EFA, AA, ABX, MSFT, MU, NVDA, VZ and WFC) for Market Maker, Market Maker Plus, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) orders when these orders interact with Priority Customer orders. Priority Customer orders in the Complex Quoting Symbols that trade in the complex order book are not charged a fee and do not receive a rebate when interacting with other Priority Customer orders.

The Exchange now proposes to increase the maker fee for the Complex Quoting Symbols to $0.35 per contract when these orders interact with Priority Customer orders in the complex order book. Specifically, with this proposed rule change, the Exchange proposes to increase the ''maker'' fee from $0.32 per contract to $0.35 per contract in GLD, VXX, XLB, EFA, AA, ABX, MSFT, MU, NVDA, VZ and WFC, and from $0.30 per contract to $0.35 per contract in XOP, for Market Maker, Market Maker Plus, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) orders when these orders interact with Priority Customer orders. The Exchange does not propose any change to fees for Priority Customer orders in the Complex Quoting Symbols that trade in the complex order book. With this proposed fee change, the Exchange seeks to standardize the ''maker'' fee charged for complex orders in the Complex Quoting Symbols when trading against Priority Customer orders and, as a result, proposes to remove the table identifying the Complex Order Maker Fee for option symbol XOP from its Schedule of Fees as it is no longer necessary to separately identify the ''maker'' fee for XOP from the ''maker'' fee for GLD, VXX, XLB, EFA, AA, ABX, MSFT, MU, NVDA, VZ and WFC because all Complex Quoting Symbols will now be charged the same rate of $0.35 per contract when trading against Priority Customer orders.

Additionally, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. This discount is applicable when Market Makers add or remove liquidity from the complex order book in the Complex Quoting Symbols. Specifically, Market Makers that add or remove [sic] liquidity in GLD, VXX, XLB, EFA, AA, ABX, MSFT, MU, NVDA, VZ and WFC from the complex order book are currently charged $0.30 per contract ($0.28 per contract in XOP) when trading against Priority Customer orders that are preferenced to them. With the proposed increase of the ''maker'' fee to $0.35 per contract for all Complex Quoting Symbols, Market Makers that add liquidity from the complex order book in the Complex Quoting Symbols will now be charged $0.33 per contract when trading against Priority Customer orders that are preferenced to them.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Complex Quoting Symbols in the complex order book.

The Exchange believes that increasing the fees applicable to orders executed in the complex order book when trading against Priority Customer orders in the

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[3] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[4] A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics during that month. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

[5] The term ''Non-ISE Market Maker'' means a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 (the ''Act'') registered in the same options class on another options exchange. *See* Schedule of Fees, page 4.

[6] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[7] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] *See* Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR–ISE–2011–39).

[9] *See* Securities Exchange Act Release Nos. 65958 (December 15, 2011), 76 FR 79236 (December 21, 2011) (SR–ISE–2011–81); 66406 (February 16, 2012), 77 FR 10579 (February 22, 2012) (SR–ISE–2012–07); and SR–ISE–2012–59 filed June 20, 2012. The Exchange notes that XOP is currently in the Penny Pilot program and GLD, VXX, XLB, AA, ABX, MSFT, MU, NVDA, VZ, and WFC are currently Select Symbols.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

Complex Quoting Symbols is appropriate given the new functionality developed by the Exchange that allows market makers to quote in the complex order book. Additionally, the Exchange's fees remain competitive with fees charged by other exchanges and are therefore reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. Specifically, the Exchange believes that its proposal to assess a ''maker'' fee of $0.35 per contract for the Complex Quoting Symbols when orders in these symbols interact with Priority Customer orders is reasonable and equitable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the ''maker'' fee for a broker/dealer complex order in MSFT at NASDAQ OMX PHLX (''PHLX'') is $0.20 per contract [12] while the same order that is electronically delivered at the Chicago Board Options Exchange (''CBOE'') is $0.45 per contract.[13] Furthermore, with this proposed fee change, the Exchange seeks to standardize the fee charged for complex orders in the Complex Quoting Symbols when these orders interact with Priority Customers in the complex order book. Additionally, one of the primary goals of this fee change is to maintain the attractive and competitive economics for Priority Customer complex orders, in light of the enhanced manner in which complex orders now trade on the Exchange.

The Exchange believes that it is reasonable and equitable to provide a two cent discount to Market Makers on preferenced orders as an incentive for them to quote in the complex order book. Accordingly, Market Makers who add or remove liquidity in the Complex Quoting Symbols from the complex order book will be charged $0.33 per contract when trading with Priority Customer orders that are preferenced to them. ISE notes that with this proposed fee change, the Exchange will continue to maintain a two cent differential that was previously in place.

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. The Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–64. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–64 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17331 Filed 7–16–12; 8:45 am]

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[12] *See* PHLX Fee Schedule, Section I, Part B., at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[13] *See* CBOE Fees Schedule, Section 1.VI. at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.*

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67402; File No. SR–NASDAQ–2012–080]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to BX Options Routing

July 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 28, 2012, the NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to modify Chapter XV, Section 2, governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options.

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on July 2, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to recoup costs that the Exchange incurs for routing and executing certain orders in equity options to BX Options.

The Exchange's Pricing Schedule at Chapter XV, Section 2(4) currently includes the following fees for routing Customer, Professional, Firm, Broker-Dealer and Market Maker orders to away markets.

Exchange	Customer	Firm	MM	Professional
BATS Penny	$0.55	$0.55	$0.55	$0.55
BOX	0.11	0.55	0.55	0.11
BATS Non-Penny	0.86	0.91	0.91	0.91
CBOE	0.11	0.55	0.55	0.31
CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDRs	0.29	0.55	0.55	0.31
C2	0.55	0.55	0.55	0.55
ISE	0.11	0.55	0.55	0.29
ISE Select Symbols *	0.31	0.55	0.55	0.39
NYSE Arca Penny Pilot	0.55	0.55	0.55	0.55
NYSE Arca Non-Penny Pilot	0.11	0.55	0.55	0.11
NYSE AMEX	0.11	0.55	0.55	0.31
PHLX (for all options other than PHLX Select Symbols)	0.11	0.55	0.55	0.31
PHLX Select Symbols **	0.50	0.55	0.55	0.51

* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

** These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Pricing Schedule for the complete list of symbols that are subject to these fees.

The Exchange is proposing to adopt the following fees when routing to BX Options:

Exchange	Customer	Firm	MM	Professional
BX Options	$0.11	$0.54	$0.54	$0.54

BX Options received approval to operate a new options market [3] and filed to adopt various fees and rebates which would become operative on July 2, 2012. Specifically, BX Options will assess a Fee to Remove Liquidity of $0.43 per contract to BX Options Market Makers and Non-Customers which includes Professionals, Firms, Broker-Dealers and Non-BX Options Marker Makers.[4] Customers would not be assessed a Fee to Remove Liquidity on BX Options. The Exchange is seeking to adopt new Routing Fees to account for these new fees and other routing costs incurred by the Exchange when routing to BX Options as of July 2, 2012.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67256 (June 26, 2012) (SR–BX–2012–030).

[4] *See* Securities Exchange Act Release No. 34–67339 (July 3, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX BX, Inc. to Adopt Transaction and Routing Fees). This filing became operative on July 2, 2012.

Nasdaq Options Services LLC (''NOS''), a member of the Exchange, is the Exchange's exclusive order router.[5] NOS is the Routing Facility for BX Options. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, and technical costs associated with routing.[6] The Exchange would therefore assess Customers $0.11 per contract, Firms would be assessed $0.54 per contract, Market Makers would be assessed $0.54 per contract and Professionals would be assessed $0.54 per contract.[7] The Exchange proposes to title the new fees ''BX Options.''

The Exchange also proposes other minor amendments to remove the following sentence from Chapter XV, Section 2(4): ''The current fees and a historical record of applicable fees shall be posted on the NasdaqTrader.com website.'' This sentence is not necessary as all rules are posted on the Exchange's Web site. Also, the Exchange is alphabetically relocating the BOX Routing Fees.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

NASDAQ believes that its proposal to amend its rules is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed BX Options Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders to BX Options on behalf of members, respectively. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs that are incurred by the Exchange. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the remove fees assessed to market participants by BX Options, plus clearing and other administrative and technical fees for the execution of Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders when routed to BX Options. The Exchange also believes that the proposed BX Options Routing Fees are equitable and not unfairly discriminatory because they would be uniformly applied to all Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are routed to BX Options.

The Exchange believes that the proposed minor amendments to remove the sentence referring to the Exchange's Web site information and the relocation of BOX Routing Fees are reasonable, equitable and not unfairly discriminatory because these amendments update Chapter XV, Section 2 of the Rules to remove an unnecessary sentence and conform the manner in which the Routing Fees are displayed.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, a NOM Participant may designate an order as not available for routing to avoid routing fees.[10]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–080 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–080. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

[5] *See* BX Rules at Chapter VI, Section 11(e) (Order Routing).

[6] In addition to membership fees and transaction fees, the Exchange also incurs an Options Regulatory Fee when routing to an away market that assesses that fee.

[7] The Exchange's proposed Routing Fees for BX would include the Fees for Removing Liquidity of $0.43 per contract, a $0.06 clearing cost and another $0.05 per contract associated with administrative and technical costs associated with operating NOS, a total of $0.54 per contract. The Exchange would only assess a Customer the $0.06 clearing cost and another $0.05 per contract associated with administrative and technical costs associated with operating NOS (a total of $0.11 per contract) because a Customer is not assessed a Fee for Removing Liquidity on BX.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* NOM Rules at Chapter VI, Section 11.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–080 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17330 Filed 7–16–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67401; File No. SR–NYSEArca–2012–68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the AdvisorShares Active Bear ETF

July 11, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 27, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect a change to the means of achieving the investment objective applicable to the AdvisorShares Active Bear ETF (the ''Fund''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved listing and trading on the Exchange of shares (''Shares'') of the AdvisorShares Active Bear ETF, a series of AdvisorShares Trust (the ''Trust''),[4] under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares are offered by the Trust, a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] The investment advisor to the Fund is AdvisorShares Investments, LLC (the ''Adviser''). Ranger Alternative Management, L.P. is the sub-advisor (''Sub-Adviser'') to the Fund and the portfolio manager. Foreside Fund Services LLC is the distributor for the Fund. The Bank of New York Mellon Corporation is the administrator, custodian, transfer agent and fund accounting agent for the Fund.

In this proposed rule change, the Exchange proposes to reflect a change to the description of the measures the Sub-Adviser will utilize to implement the Fund's investment objective.[6] As reflected in the Prior Release, the Fund's investment objective is to seek capital appreciation through short sales of domestically traded equity securities. The Sub-Advisor seeks to achieve the Fund's investment objective by short selling a portfolio of liquid mid- and large-cap U.S. exchange-traded equity securities, exchange-traded funds (''ETFs'') registered pursuant to the 1940 Act, and exchange-traded products (''ETPs''), including exchange-traded notes (''ETNs'', and, collectively with ETFs and ETPs, ''Underlying ETPs'').[7] In contrast to ETFs, ETNs and ETPs are not registered pursuant to the 1940 Act.

The Exchange seeks to make a change to representations made by the Adviser reflected in the Prior Release, as described below. As stated in the Prior Notice, the Fund generally targets a composition of 20 to 50 equity short positions, with an average individual position size which generally ranges between 2–7% of the aggregate portfolio exposure. Going forward, the Fund generally will target a composition of 20 to 75 equity short positions, with no change in the aggregate portfolio exposure size.

The Adviser represents that the purpose of this change is to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective by providing a limited increase in the number of equity short positions in the Fund's portfolio. Such an increase will permit the Fund to include a broader range of market sectors in the mid- and large-cap equity securities and Underlying ETPs in which the Fund invests, and will further the Fund's objective to seek capital appreciation.

The Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 63737 (January 19, 2011), 76 FR 4968 (January 27, 2011) (SR–NYSEArca–2010–107) (''Prior Order''). *See also* Securities Exchange Act Release No. 63447 (December 7, 2010), 75 FR 77681 (December 13, 2010) (SR–NYSEArca–2010–107) (''Prior Notice,'' and together with the Prior Order, the ''Prior Release'').

[5] The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). On September 22, 2010, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act''), and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[6] The change described herein will be effective upon filing with the Commission of another amendment to the Trust's Registration Statement. *See* note 5, *supra.* The Adviser represents that the Adviser and Sub-Adviser have managed and will continue to manage the Fund in the manner described in the Prior Release, and will not implement the change described herein until the instant proposed rule change is operative.

[7] The Fund may sell short only equity securities traded in the U.S. on registered exchanges. The Fund does not purchase or borrow illiquid securities or securities registered pursuant to Rule 144A under the 1933 Act.

Except for the change noted above, all other facts presented and representations made in the Rule 19b–4 [8] filing underlying the Prior Release remain unchanged, including representations regarding implementation of ''fire walls'' by any additional Fund advisers and sub-advisers affiliated with a broker-dealer, and equity securities and Underlying ETPs in which the Fund invests.

All terms referenced but not defined herein are defined in the Prior Release.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Fund may sell short only liquid equity securities and Underlying ETPs traded in the U.S. on registered exchanges. The Fund does not purchase or borrow illiquid securities or securities registered pursuant to Rule 144A under the 1933 Act. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that there is no change to the Fund's investment objective. The Adviser represents that the purpose of this change is to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective by providing a limited increase in the number of equity short positions in the Fund's portfolio, which will permit the Fund to include a broader range of market sectors in the mid- and large-cap equity securities and Underlying ETPs in which the Fund invests, and will further the Fund's objective to seek capital appreciation.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the Fund may sell short only liquid equity securities and Underlying ETPs traded in the U.S. on registered exchanges. The Adviser represents that the purpose of this change is to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective. Except for the change noted above, all other representations made in the Rule 19b–4 filing underlying the Prior Release remain unchanged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission notes that, under the proposal, the Fund will target a composition of 20 to 75 equity short positions, versus the current target composition of 20 to 50 equity short positions. Thus, the Sub-Advisor to the Fund would have the flexibility to include a broader range of market sectors in the mid- and large-cap equity securities and Underlying ETPs in selecting the Fund's investments, while continuing to seek capital appreciation.

The Commission notes that, except for the changes stated herein, all other representations made in the Prior Release remain unchanged. In addition, the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

For the foregoing reasons, the Commission believes that the proposed change does not raise novel or unique regulatory issues that should delay the implementation of the Fund's proposed changes. In addition, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, as a waiver would allow the Sub-Advisor the flexibility to invest in ways it believes will result in greater returns for investors, with the continued goal of seeking capital appreciation, without undue delay.[13] Accordingly, the Commission waives the 30-day operative delay requirement.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File

[8] 17 CFR 240.19b–4.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Number SR–NYSEArca–2012–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–68. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–68 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17329 Filed 7–16–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67400; File No. SR–ISE–2012–63]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees and Rebates for Certain Complex Orders Executed on the Exchange

July 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend transaction fees and rebates for certain complex orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in a number of options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange also currently assesses maker/taker fees and rebates for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[4] The purpose of this proposed rule change is to amend maker/taker fees and rebates for complex orders in the Non-Penny Pilot Symbols.

For complex orders in the Non-Penny Pilot Symbols, the Exchange currently charges a ''taker'' fee of: (i) $0.73 per contract for ISE Market Maker,[5] Firm Proprietary and Customer (Professional)[6] orders; and (ii) $0.78 per contract for Non-ISE Market Maker[7] orders. Priority Customer[8] orders are not charged a ''taker'' fee for complex orders in the Non-Penny Pilot Symbols. For complex orders in these same symbols, the Exchange currently charges a ''maker'' fee of $0.10 per contract for ISE Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) orders. Priority Customer orders are not charged a ''maker'' fee for complex orders in these symbols.

The Exchange now proposes to increase the ''taker'' fee for complex orders in the Non-Penny Pilot Symbols to (i) [sic] $0.75 per contract for ISE

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06); and 66962 (May 10, 2012), 77 FR 28917 (May 16, 2012) (SR–ISE–2012–35).

[5] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[6] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[7] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), registered in the same options class on another options exchange.

[8] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

Market Maker, Firm Proprietary and Customer (Professional) orders. The Exchange is not proposing any change to the ''taker'' fees for Non-ISE Market Maker and Priority Customer orders.

Further, the Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in the Non-Penny Pilot Symbols when these orders trade with non-Priority Customer orders in the complex order book. Specifically, the Exchange currently provides a rebate of $0.57 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve certain average daily volume (ADV) of Priority Customer complex order contracts across all symbols executed during a calendar month are provided a rebate of $0.59 per contract per leg, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.61 per contract per leg, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.615 per contract per leg, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange, the Exchange now proposes to increase the base amount of the rebate to $0.62 per contract. Additionally, the Exchange proposes to increase the amount of that rebate even further, on a month-by-month and Member-by-Member basis, if such Member achieves an ADV of Priority Customer complex order contracts across all symbols executed during the calendar month, as follows: If the Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount shall be $0.64 per contract per leg; if the Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount shall be $0.66 per contract per leg; and if the Member achieves an ADV of 250,000 Priority Customer complex order contracts, the rebate amount shall be $0.67 per contract per leg.

Additionally, the Exchange provides ISE Market Makers with a two cent discount when trading against orders that are preferenced to them. This discount is applicable when ISE Market Makers remove liquidity in the Non-Penny Pilot Symbols from the complex order book. With the proposed increase to the ''taker'' fee for complex orders in the Non-Penny Pilot Symbols, ISE Market Makers who remove liquidity in the Non-Penny Pilot Symbols from the complex order book by trading with orders that are preferenced to them will be charged $0.73 per contract.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act [9] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act [10] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to interact with and respond to certain types of orders.

The Exchange believes it is reasonable and equitable to charge ISE Market Maker, Firm Proprietary and Customer (Professional) orders a ''taker'' fee of $0.75 per contract for complex orders in the Non-Penny Pilot Symbols because the Exchange is seeking to recoup the cost associated with paying increased rebates for Priority Customer complex orders. The Exchange believes the proposed fees are also reasonable and equitably allocated because they are within the range of fees assessed by other exchanges employing similar pricing schemes.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides these types of rebates, and is now merely proposing to increase those rebate amounts. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange believes that it is reasonable and equitable to provide a two cent discount to ISE Market Makers on preferenced orders as an incentive for them to quote in the complex order book. The Exchange notes that PHLX currently provides a similar discount. Accordingly, ISE Market Makers who remove liquidity in the Non-Penny Pilot Symbols from the complex order book will be charged $0.73 per contract when trading with orders that are preferenced to them. The Exchange notes that with this proposed fee change, the Exchange, while increasing this fee, will continue to maintain a two cent differential that was previously in place.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that increasing its complex order rebates will attract additional complex order business to the Exchange. The Exchange further believes that the Exchange's complex order rebates and its maker/taker fees are not unfairly discriminatory because these fee structures are consistent with fee structures that exist today at other options exchanges. Additionally, the Exchange believes that the proposed fees and rebates are fair, equitable and not unfairly discriminatory because the proposed fees and rebates are consistent with price differentiation that exists today at other option exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. With this proposed rebate change, the Exchange believes it remains an attractive venue for market participants to trade complex orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–63 and should be submitted on or before August 7, 2012.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17328 Filed 7–16–12; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67409; File No. SR–C2–2012–022]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Continuous Quotes

July 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 5, 2012, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules relating to continuous quotes. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 8.5, ''Obligations of Market-Makers,'' to reduce to 90% the percentage of time for which a Market-Maker is required to provide quotes in an appointed option class. The proposed rule change is comparable to the rules of other options exchanges applicable to equivalent market participants.[3]

Rule 8.5(a)(1) provides that during trading hours, a Market-Maker must maintain a continuous two-sided market in 60% of the non-adjusted option series[4] of each registered class that have a time to expiration of less than nine months. For purposes of that obligation, ''continuous'' means 99% of the time. The rule also provides that if a technical failure or limitation of the Exchange's system prevents a Market-Maker from maintaining, or from communicating to the Exchange, timely and accurate quotes in a series, the duration of such failure will not be considered in determining whether that Market-Maker

[3] The continuous quoting obligations for NASDAQ Options Market (''NOM'') market-makers and NASDAQ OMX PHLX LLC (''PHLX'') streaming quote trades (''SQTs'') and remote SQTs (''RSQTs) are generally as follows: (1) NOM Chapter VII, Section 6(d)—market-makers must enter continuous bids and offers in at least 60% of the series in options in which the market-maker is registered for 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as NASDAQ may announce in advance; and (2) PHLX Rule 1014(b)(ii)(D)(1)—SQTs and RSQTs must quote two-sided markets in 60% of series of the options in which they are assigned for at least 90% of the trading day (as a percentage of the total number of minutes in such trading day).

[4] The rule defines an ''adjusted option series'' as an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stock or Units.

has satisfied the 99% quoting standard with respect to that series. The Exchange may consider other exceptions to this obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. The Exchange proposes to amend the continuous quoting obligation for Market-Makers from 99% to 90% of the time. The rule will still provide for automatic exceptions for technical failures or system limitations and discretionary exceptions based on demonstrated legal or regulatory requirements or other mitigating circumstances.

The Exchange does not believe that the proposed rule change would adversely affect the quality of the Exchange's market or lead to a material decrease in liquidity. Rather, the Exchange believes that its current market structure with its high rate of participation by Market-Makers permits the lowering of the quoting time obligation without fear of losing liquidity. The Exchange Rules impose a number of other obligations on Market-Makers that will continue to ensure that they create and maintain a fair and orderly market in the option classes to which they are assigned. In particular, the proposed rule change does not change a Market-Maker's obligation to provide continuous quotes in 60% of each allocated class. In addition, the proposed rule change would not excuse a Market-Maker from its obligation to submit a single quote or maintain continuous quotes in one or more series of a class to which the Market-Maker is appointed when called upon by an Exchange official if, in the judgment of such official, it is necessary to do so in the interest of maintaining a fair and orderly market.[5]

In support of this proposal, the Exchange notes that other competing options exchanges impose continuous quoting obligations on their market participants that have equivalent rights and obligations as Market-Makers that are comparable to the obligations proposed in this filing:

	Percent time	Percent series	Classes
C2 (current rule)	99 of the time	60	Class-by-class.
NOM	90 of a trading day	60	All classes collectively.
PHLX (SQTs and RSQTs)	90 of the trading day	60	All classes collectively.

As the above table shows, upon effectiveness of the propose rule change, Market-Makers will be required to provide continuous quotes for the same amount of time in the same percentage of series as market-makers at these other exchanges. Additionally, the Exchange notes that C2's quoting obligation is more restrictive than that of other exchanges, because it applies its continuous quoting obligation on a class-by-class basis, whereas the other exchanges apply their quoting obligations to all classes collectively. As a result, C2's rules ensure that Market-Makers provide liquidity in a significant number of series in each class in which they are quoting, whereas the other exchanges' rules could result in reduced or no liquidity in certain classes.[6]

The Exchange believes that the benefit to Market-Makers of the slightly reduced quoting obligation (which still results in similar quoting times as other exchanges as shown above) is offset by their continued responsibility to provide minimum liquidity in each appointed class in which they are quoting (a more restrictive standard than the other exchanges discussed in this filing) and to quote upon request, as discussed above. The Exchange also believes this proposal will make the quoting time requirements of Market-Makers more comparable to those at other options exchanges and is therefore essential for competitive purposes. C2 believes it is disadvantageous to C2 Market-Makers if they are subject to stricter timing requirements with respect to their continuous quoting obligations than market-makers at other options exchanges.

The proposed rule change also amends Rule 8.13(d) to clarify that Preferred Market-Makers[7] must continue to provide continuous quotes in at least 90% of the non-adjusted option series of each class for which it receives Preferred Market-Maker orders for 99% of the time. Additionally, the proposed rule change adds a provision to Rule 8.13(d) that says if a technical failure or limitation of the Exchange's system prevents a Preferred Market-Maker from maintaining, or from communicating to the Exchange, timely and accurate quotes in a series, the duration of such failure will not be considered in determining whether that Preferred Market-Maker has satisfied the 99% quoting standard with respect to that series, and that the Exchange may consider other exceptions to this obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. This proposal is merely a clarification of the current requirement for Preferred Market-Makers, which is currently not specified in the definition of ''continuous'' in Rule 8.13(d).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes this proposed rule change promotes just and equitable principles of trade because it reduces burdens and unnecessary restrictiveness on Market-Makers. The Exchange still imposes many obligations on Market-Makers to maintain a fair and orderly market in

[5] *See* Rule 8.5(d).

[6] For example, consider a Market-Maker with 10 appointed classes, each of which has 50 series, for a total of 500 series, quoting in each class during a regular 390-minute trading day. Market-Makers at each of C2, NOM and PHLX would be required to quote in at least 300 series for 90% of the trading day (351 minutes). However, C2 would require Market-Makers to quote in at least 30 series in each class; while market-makers at NOM and PHLX could satisfy their quoting obligations by quoting in, for example, 40 series in each of 6 classes and only 15 series in each of 4 classes, or 50 series in each of 6 classes and no series in the other 4 classes.

[7] Rule 8.13(a) provides that the Exchange may allow, on a class-by-class basis, for the receipt of marketable orders, through the Exchange's system when the Exchange's disseminated quote is the national best bid or offer, that carry a designation from the member transmitting the order that specifies a Market-Maker in that class as the ''Preferred Market-Maker'' for that order. The Exchange currently has no Preferred Market-Makers.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity. While the time during which Market-Makers must provide continuous quotes will be slightly reduced, Market-Makers will still be obligated to provide continuous electronic quotes for a significant part of the trading day in 60% of series of each appointed class. Additionally, all Market-Makers will continue to be obligated to quote the series when requested by an Exchange official, or if the need otherwise arises. Accordingly, the proposal supports the quality of C2's market by helping to ensure that Market-Makers will continue to be obligated to quote in series when necessary.

The proposed rule change also will allow the Exchange to require its Market-Makers to provide continuous quotes in their appointed classes for a portion of the trading day that is the same as that of market-makers at other exchanges, which the Exchange believes will help remove impediments to and promote a free and open market.

Finally, the proposed rule change to Rule 8.13(d) protects investors and the public interest by clarifying in the Rules the continuous quoting obligations of Preferred Market-Makers.

For the foregoing reasons, the Exchange believes that the balance between the benefits provided to Market-Makers and the obligations imposed upon Market-Makers by the proposed rule change is appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the proposed rule change is comparable to current rules at competing options exchanges related to market-maker continuous quoting obligations [10] and will ensure fair competition among the options exchanges with respect to these obligations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[10] *See supra* note 3.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. Impose any significant burden on competition; and

C. Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate,

it has become effective pursuant to Section 19(b)(3)(A) [11] of the Act and Rule 19b–4(f)(6) [12] thereunder.

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2012–022 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2012–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2012–022 and should be submitted on or before August 7, 2012.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17347 Filed 7–16–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67410; File No. SR–CBOE–2012–064]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Continuous Electronic Quotes

July 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 5, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules relating to continuous electronic quotes. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 1.1(ccc), ''Continuous Electronic Quotes,'' to reduce to 90% the percentage of time for which a Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day. Additionally, the proposed rule change amends Rules 8.13, 8.15A, 8.85 and 8.93 to increase to the lesser of 99% or 100% minus one call-put pair the percentage of series in each class in which Preferred Market-Makers (''PMMs''), LMMs, Designated Primary Market-Makers (''DPMs''), and electronic DPMs (''e-DPMs''), respectively (Market-Makers, PMMs, LMMs, DPMs and e-DPMs are collectively referred to in this filing as ''Market-Makers'' unless the context provides otherwise), must provide continuous electronic quotes. The proposed rule change is comparable to the rules of other options exchanges applicable to equivalent market participants.[3]

Rules 8.7, 8.13, 8.15A, 8.85, and 8.93 impose certain obligations on Market-Makers, PMMs, LMMs, DPMs, and e-DPMs, respectively. These Rules require that Market-Makers generally maintain continuous electronic quotes as follows:

- Rule 8.7(d)(ii)(B) requires that Market-Makers provide continuous electronic quotes when quoting in a particular class on a given trading day in 60% of the non-adjusted option series of the Market-Maker's appointed class that have a time to expiration of less than nine months;
- Rule 8.13(d) requires that PMMs provide continuous electronic quotes when the Exchange is open for trading in at least 90% of the non-adjusted option series of each class for which it receives Preferred Market-Maker orders;
- Rule 8.15A(b)(i) requires that LMMs provide continuous electronic quotes when the Exchange is open for trading in at least 90% of the non-adjusted option series within their assigned classes;
- Rule 8.85(a)(i) requires DPMs to provide continuous electronic quotes when the Exchange is open for trading in at least 90% of the non-adjusted option series of each multiply listed option class allocated to it and in 100% of the non-adjusted option series of each singly listed option class allocated to it; and
- Rule 8.93 requires e-DPMs to provide continuous electronic quotes when the Exchange is open for trading in at least 90% of the non-adjusted option series of each allocated class.

Rule 1.1(ccc) currently provides that a Market-Maker who is obligated by CBOE Rules to provide continuous electronic quotes will be deemed to have provided ''continuous electronic quotes'' if the Market-Maker provides electronic two-sided quotes for 99% of the time that the Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day. The rule also provides that if a technical failure or limitation of a system of the Exchange prevents the Market-Maker from maintaining, or from communicating to the Exchange, timely and accurate electronic quotes in a class, the duration of such failure will not be considered in determining whether the Market-Maker has satisfied the 99% quoting standard with respect to that option class. The Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.

The Exchange proposes to amend the definition of continuous electronic quotes to mean 90% of the time a Market-Maker is required to quote in an appointed option class on a given trading day. The rule will still provide for automatic exceptions for technical failures or system limitations and discretionary exceptions based on demonstrated legal or regulatory requirements or other mitigating circumstances.

The Exchange also proposes to increase the percentage of series in each option class in which PMMs, LMMs, DPMs and e-DPMs are required to provide continuous electronic quotes. The proposed rule change amends: (i) Rule 8.13(d) to require PMMs to provide

[3] The continuous quoting obligations for NASDAQ Options Market (''NOM'') market-makers and NASDAQ OMX PHLX LLC (''PHLX'') streaming quote trades (''SQTs'') and remote SQTs (''RSQTs'') (similar to Market-Makers) are generally as follows: (1) NOM Chapter VII, Section 6(d)—market-makers must enter continuous bids and offers in at least 60% of the series in options in which the market-maker is registered for 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as NASDAQ may announce in advance; and (2) PHLX Rule 1014(b)(ii)(D)(1)–SQTs and RSQTs must quote two-sided markets in 60% of series of the options in which they are assigned for at least 90% of the trading day (as a percentage of the total number of minutes in such trading day).

The continuous quoting obligations for NYSE Amex LLC (''NYSE Amex'') and NYSE Arca, Inc. (''NYSE Arca'') directed order market-makers and PHLX directed SQTs and RSQTs (similar to PMMs) are as follows: (1) NYSE Amex Options Rules 964.1NY—directed order market-makers must provide continuous two-sided quotations throughout the trading day in issues for which it receives directed orders for 90% of the time NYSE Amex is open for trading in each issue (applies to all of the directed order market-maker's appointed issues collectively); (2) NYSE Arca Options Rules 6.88—directed order market-makers must provide continuous two-sided quotations throughout the trading day in issues for which it receives directed orders for 90% of the time NYSE Arca is open for trading in each issue (applies to all of the directed order market-maker's appointed issues collectively); and (3) PHLX Rule 1014(b)(ii)(D)(1)—directed SQTs and RSQTs must quote two-sided markets in the lesser of 99% of series listed on the exchange or 100% of the series listed on the exchange minus one call-put pair, in each case in at least 60% of the options classes in which they are assigned for at least 90% of the trading day (as a percentage of the total number of minutes in such trading day); once they enter a quote in an assigned class, they must maintain until the close of that trading day quotations for the lesser of 99% of the series of the option listed on the Exchange or 100% of the series of the option listed on the Exchange minus one call-put pair.

The continuous quoting obligations for NYSE Amex and PHLX specialists and NYSE Arca lead market-makers (similar to LMMs, DPMs and e-DPMs) are as follows: (1) NYSE Amex Options Rules 925.1NY—specialists must provide continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time NYSE Amex is open for trading in each issue (applies to all of the specialist's appointed issues collectively); (2) NYSE Arca Options Rules 6.37B—lead market-makers must provide continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time NYSE Arca is open for trading in each issue (applies to all of the lead market-maker's appointed issues collectively); and (3) PHLX Rule 1014(b)(ii)(D)(1)—specialists are responsible to quote two-sided markets in the lesser of 99% of the series or 100% of the series minus one call-put pair in each option in which such specialist is assigned for 90% of the trading day (as a percentage of the total number of minutes in such trading day).

continuous electronic quotes when the Exchange is open for trading in at least the lesser of 99% of the non-adjusted option series or 100% of the non-adjusted option series minus one call-put pair [4] of each class for which it receives Preferred Market-Maker orders; (ii) Rule 8.15A(b)(i) to require LMMs to provide continuous electronic quotes when the Exchange is open for trading in at least the lesser of 99% of the non-adjusted option series or 100% of the non-adjusted option series minus one call-put pair within their assigned classes; (iii) Rule 8.85(a)(i) to require DPMs to provide continuous electronic quotes when the Exchange is open for trading in at least the lesser of 99% of the non-adjusted option series or 100% of the non-adjusted option series minus one call-put pair of each option class allocated to them; and (iv) Rule 8.93 to require e-DPMs to provide continuous electronic quotes when the Exchange is open for trading in at least the lesser of 99% of the non-adjusted option series or 100% of the non-adjusted option series minus one call-put pair of each allocated class.

The proposed rule change also makes additional changes to create consistency among the continuous quoting obligations for all CBOE Market-Makers. The proposed rule change eliminates the separate quoting requirements for DPMs in singly listed and multiply listed classes. This will cause the quoting obligation for multiply listed classes to increase from 90% to 99% of the series and for singly listed classes to decrease slightly from 100% to 99%. The Exchange believes that is no longer necessary to have a separate, slightly higher requirement for singly listed classes given the increase in the obligation for multiply listed series. The proposed rule change also deletes the requirement that e-DPMs will alternatively be required to respond to 98% of the requests for quotes (''RFQs'') if the Exchange has enabled RFQ functionality in a class. The Exchange never enabled the RFQ functionality in any class for e-DPMs, and it is no longer available. Therefore, the Exchange believes it is appropriate to delete this provision from the e-DPM rules.

The Exchange does not believe that the proposed rule change would adversely affect the quality of the Exchange's markets or lead to a material decrease in liquidity. Rather, the Exchange believes that its current market structure with its high rate of participation by Market-Makers permits the lowering of the quoting time obligation without fear of losing liquidity. Market-Makers will continue to be required to provide continuous electronic quotes in 60% of each allocated class. Additionally, for PMMs, LMMs, DPMs and e-DPMS, the proposed reduction in required quoting time will be offset by the increase in percentage of series in each appointed class in which PMMs, LMMs, DPMs and e-DPMs are required to provide continuous electronic quotes. The proposed rule change to require PMMs, LMMs, DPMs and e-DPMs to quote in the lesser of 99% of the series or 100% of the series minus one call-put pair in each class provides flexibility in assignments that contain relatively fewer series and avoids situations when failure to quote 90% of the trading day in merely one individual option or one pair breaches the quoting requirement.

The Exchange Rules also impose a number of other obligations on Market-Makers that will continue to ensure that they create and maintain a fair and orderly market in the option classes to which they are assigned. The proposed rule change would not excuse a Market-Maker that is present on the trading floor from its obligation to provide a two-sided market complying with the bid/ask differential requirements in response to any request for quote by a floor broker, Trading Permit Holder or PAR Official.[5] The proposed rule change would also not excuse a Market-Maker that is present on the trading floor from its obligation to provide an open outcry two-sided market complying with the bid/ask differential requirements in response to a request for a quote by a Trading Permit Holder or PAR Official directed at that Market-Maker or when, in response to a general request for a quote by a Trading Permit Holder or PAR Official, a market is not then being vocalized by a reasonable number of Market-Makers.[6] Further, the proposed rule change would not excuse a Market-Maker from its obligation to submit a single quote or maintain continuous quotes in one or more series of a class to which the Market-Maker is appointed when called upon by an Exchange official if, in the judgment of such official, it is necessary to do so in the interest of maintaining a fair and orderly market.[7]

In support of this proposal, the Exchange notes that other competing options exchanges impose continuous quoting obligations on their market participants that have equivalent rights and obligations as Market-Makers, PMMs, LMMs, DPMs and e-DPMs that are comparable to the obligations proposed in this filing:

MARKET-MAKERS

	% Time	% Series	Classes
CBOE (current rule)	99% of the time required to provide quotes on a trading day when quoting.	60	Class-by-class.
NOM	90% of a trading day	60	All classes collectively.
PHLX (SQTs and RSQTs)	90% of the trading day	60	All classes collectively.

PMMS

	% Time	% Series	Classes
CBOE (current rule)	99% of the time required to provide quotes on a trading day	90	Class-by-class.
NYSE Amex (directed order market-makers).	90% of the time open for trading	N/A	All classes collectively.

[4] A ''call-put pair'' consists of two individual options, one call and one put, which cover the same underlying instrument and have the same expiration date and exercise price. Failure to maintain a qualifying (90% of the time, as proposed in this filing) quote in just one call, one put, or in one call and one ''paired'' put, would not by itself (assuming all other series of a class are being quoted as required) constitute a violation of 99%-of-the-series requirement.

[5] *See* Rule 8.7(d)(i)(C) (relating to a request for quote by a floor broker) and (ii)(C) (relating to a request for a quote by a Trading Permit Holder or PAR Official).

[6] *See* Rule 8.7(d)(iv).

[7] *Id.*

PMMs—Continued

	% Time	% Series	Classes
NYSE Arca (directed order market-makers).	90% of the time open for trading	N/A	All classes collectively.
PHLX (directed SQTs and RSQTs).	90% of the trading day	99% (or 100% minus one call-put pair) 60	60% of classes (and any classes in which they enter quotes during a trading day). Remaining classes.

LMMs/DPMs/E-DPMs

	% Time	% Series	Classes
CBOE (current rule)	99% of the time required to provide quotes on a trading day.	90% *	Class-by-class.
NYSE Amex (specialists)	90% of the time open for trading	N/A	All classes collectively.
NYSE Arca (lead market-makers).	90% of the time open for trading	N/A	All classes collectively.
PHLX (specialists)	90% of the trading day	99% (or 100% minus one call-put pair)	Class-by-class.

* DPMs are required to quote in 100% of the series in a class for singly listed options. E–DPMs are alternatively required to respond to 98% of the RFQ if the Exchange has enabled RFQ functionality in a class. The proposed rule change eliminates both of those alternative requirements.

As the above tables show, there are slight differences among the quoting obligations of these exchanges, including differences in the application of these obligations to appointed option classes collectively or on a class-by-class basis and slight differences in the percentages of series of appointed classes in which market-makers must provide continuous electronic quotes. However, the Exchange believes that despite these slight variations, upon effectiveness of the proposed rule change, Market-Makers will be required to provide continuous electronic quotes for the same amount of time in the same or a substantially similar percentage of series as market-makers at these other exchanges.

To demonstrate this point, consider a Market-Maker with 10 appointed classes, each of which has 50 series, for a total of 500 series, quoting in each class during a regular 390-minute trading day.[8] The following table shows the ''minimum total quoting minutes,'' which equals the number of required minutes in a trading day times the number of series required to be quoted,[9] of CBOE Market-Makers, NOM market-makers and PHLX SQTs or RSQTs (assuming effectiveness of the proposed rule change): [10]

Exchange	% time required to quote	% series required to quote	Minimum total quoting minutes
CBOE	90% (351 minutes)	60% (300 series)	105,300 (351 minutes × 300 series)
NOM	90% (351 minutes)	60% (300 series)	105,300 (351 minutes × 300 series)
PHLX	90% (351 minutes)	60% (300 series)	105,300 (351 minutes × 300 series)

The following table shows the ''minimum total quoting minutes'' of CBOE PMMs, NYSE Amex and NYSE Arca directed order market-makers, and PHLX directed SQTs and RSQTs (assuming effectiveness of the proposed rule change):

Exchange	% time required to quote	% series required to quote	Minimum total quoting minutes
CBOE	90% (351 minutes)	99% (495 series)	173,745 (351 minutes × 495 series)
NYSE Amex *	90% (351 minutes)	100% (500 series)	175,500 (351 minutes × 500 series)
NYSE Arca *	90% (351 minutes)	100% (500 series)	175,500 (351 minutes × 500 series)

[8] The Exchange notes that Rule 8.7(d)(iii) provides that the continuous quoting obligation applies to a Market-Maker on a per class basis only when the Market-Maker is quoting in a particular class on a given trading day. For purposes of this example, the Exchange assumes that a Market-Maker is quoting in all of its appointed classes for an entire trading day.

[9] The ''maximum total quoting minutes'' in a trading day would equal 390 minutes times 500 series, or 195,000.

[10] Given CBOE's current 99% requirement, the minimum total quoting minutes for CBOE Market-Makers quoting in all classes for an entire trading day is 115,830 (386.1 minutes × 300 series), assuming they are quoting in all appointed classes for an entire trading day, which is higher than that of NOM market-makers and PHLX SQTs and RSQTs.

[11] *See supra* note 3.

Exchange	% time required to quote	% series required to quote	Minimum total quoting minutes
PHLX**	90% (351 minutes)	99% (495 series)	173,745 (351 minutes × 495 series)

*NYSE Amex and NYSE Arca rules do not specify a minimum percentage of series in which their directed order market-makers must maintain continuous electronic quotes in their appointed classes.[11] The Exchange assumes for purposes of this example that the continuous quoting obligation applies to 100% of series in all appointed classes.

**Phlx rules provide that directed SQTs and RSQTs must quote two-sided markets in the lesser of 99% of series listed on the exchange or 100% of the series listed on the exchange minus one call-put pair, in each case in at least 60% of the options classes in which they are assigned for at least 90% of the trading day (as a percentage of the total number of minutes in such trading day). Additionally, once they enter a quote in an assigned class, they must maintain until the close of that trading day quotations for the lesser of 99% of the series of the option listed on the Exchange or 100% of the series of the option listed on the Exchange minus one call-put pair. The Exchange assumes for purposes of this example that the directed SQT/RSQT enters quotes in all of its assigned classes during the trading day.

The following table shows the ''minimum total quoting minutes'' of CBOE LMMs/DPMs/e-DPMs, NYSE Amex specialists, NYSE Arca lead market-makers, and PHLX specialists (assuming effectiveness of the proposed rule change):

Exchange	% time required to quote	% series required to quote	Minimum total quoting minutes
CBOE	90% (351 minutes)	99% (495 series)	173,745 (351 minutes × 495 series)
NYSE Amex*	90% (351 minutes)	100% (500 series)	175,500 (351 minutes × 500 series)
NYSE Arca*	90% (351 minutes)	100% (500 series)	175,500 (351 minutes × 500 series)
PHLX	90% (351 minutes)	99% (495 series)	173,745 (351 minutes × 495 series)

*NYSE Amex and NYSE Arca rules do not specify a minimum percentage of series in which their specialists and lead market-makers, respectively, must maintain continuous electronic quotes in their appointed classes.[12] The Exchange assumes for purposes of this example that the continuous quoting obligation applies to 100% of series in all appointed classes.

As the above example demonstrates, upon effectiveness of the proposed rule change, the minimum quoting minutes for Market-Makers will be the same as those of NOM market-makers and PHLX SQTs and RSQTs.[13] The minimum quoting minutes of PMMs will be slightly less than NYSE Amex and NYSE Arca directed order market-makers and the same as PHLX directed SQTs and RSQTs. The minimum quoting minutes of LMMs, DPMs and e-DPMs will be the same as PHLX specialists and slightly less than NYSE Amex specialists and NYSE Arca lead market-market makers.[14]

The Exchange believes this proposal will make the quoting time requirements of Market-Makers more comparable to those at other options exchanges and is therefore essential for competitive purposes. CBOE believes it is disadvantageous to CBOE Market-Makers if they are subject to stricter timing requirements with respect to their continuous quoting obligations than market-makers at other options exchanges.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes this proposed rule change promotes just and equitable principles of trade because it reduces burdens and unnecessary restrictiveness on Market-Makers. The Exchange still imposes many obligations on Market-Makers to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity. While the time during which Market-Makers must provide continuous electronic quotes will be slightly reduced, Market-Makers will still be obligated to provide continuous electronic quotes for a significant part of the trading day in 60% of series of each appointed class. PMMs, LMMs, DPMs and e-DPMs will be obligated to provide continuous electronic quotes for a significant part of the trading date in an increased percentage (99% or 100% minus one call-put pair) of series of each appointed class. Additionally, all Market-Makers will continue to be obligated to quote the series when requested by a floor broker, Trading Permit Holder or PAR Official, or if the need otherwise arises.

Accordingly, the proposal supports the quality of CBOE's markets by helping to ensure that Market-Makers will continue to be obligated to quote in series when necessary. With respect to PMMs, LMMs, DPMs and e-DPMs, the benefit provided to these Market-Makers from the proposed reduction in required quoting time is offset by the proposed increased in required percentage of series in which these Market-Makers must provide continuous electronic quotes. Ultimately, the benefits the

[12] *Id.*

[13] In addition, because CBOE applies its continuous quoting obligation to Market-Makers on a class-by-class basis as opposed to all classes collectively as the other exchanges do, CBOE's rules ensure that Market-Makers, when they are quoting in all appointed classes for an entire trading day, provide liquidity in a significant number of series in each class in which they are quoting, whereas the other exchanges' rules could result in reduced or no liquidity in certain classes.

[14] The Exchange notes that for PMMs, LMMs, DPMs and e-DPMs, upon effectiveness of the proposed rule change, the ''minimum quoting minutes'' will be the same as it is currently for those Market-Makers (using the above example, the current minimum quoting minutes is 386.1 minutes × 450 series = 173,745 quoting minutes).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

proposed rule change confers upon Market-Makers are offset by the continued, and for PMMs, LMMs, DPMs and e-DPMs increased, responsibilities to provide significant liquidity to the market to the benefit of market participants. In addition, the proposal allows flexibility with respect to PMMs', LMMs', DPMs' and e-DPMs' assignments that contain relatively fewer series and reduces unnecessary rigidity in DPMs' quoting obligations with respect to singly listed series.

The proposed rule change also protects investors and the public interest by creating more uniformity and consistency among the Exchange's rules related to Market-Maker quoting obligations and deleting a provision regarding functionality that is no longer used by the Exchange.

Finally, the proposed rule change allows the Exchange to require its Market-Makers to provide continuous quotes in a percentage of series in their appointed classes for a portion of the trading day that is the same as that of market-makers at other exchanges, which the Exchange believes will ultimately make the Exchange more competitive and help remove impediments to and promote a free and open market.

For the foregoing reasons, the Exchange believes that the balance between the benefits provided to Market-Makers and the obligations imposed upon Market-Makers by the proposed rule change is appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the proposed rule change is comparable to current rules at competing options exchanges related to market-maker continuous quoting obligations [17] and will ensure fair competition among the options exchanges with respect to these obligations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[17] *See supra* note 3.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. Impose any significant burden on competition; and

C. Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [18] of the Act and Rule 19b–4(f)(6) [19] thereunder.

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–064 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–064 and should be submitted on or before August 7, 2012.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17348 Filed 7–16–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67413; File No. SR–NASDAQ–2012–084]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rule 4751(f)(7) Concerning the Processing of the Price To Comply Order

July 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify how the processing of a Price to Comply

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Order under Rule 4751(f)(7) operates based on the method of entry.

The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a)–(e)

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(6) No change.

(7) ''Price to Comply Order'' are orders that, if, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order entered through an OUCH port *that crosses the market will* [may] be adjusted once *and, depending on the election of the member firm, either rest on the book* or [multiple times depending upon the election of the member firm and changes to the prevailing NBBO] *be canceled if the previously-locking price becomes available. The displayed and undisplayed prices of a Price to Comply order entered through an OUCH port that locks the market will be adjusted once and, depending on the election of the member firm, either rest on the book, be canceled, or adjusted a second time if the previously-locking price becomes available.* The displayed and undisplayed prices of a Price to Comply order entered through a RASH port may be adjusted multiple times, depending upon changes to the prevailing NBBO.

(8)–(14) No change.

(g)–(i) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify how OUCH port-entered Price to Comply Orders [3] will operate. Price to Comply Orders, as described in Rule 4751(f)(7), allow member firms to quote aggressively and still comply with the locked and crossed markets provisions of Regulation NMS.[4] NASDAQ recently amended Rule 4751(f)(7) to clarify the effect that the methods of order entry have on the processing of Price to Comply Orders.[5] The rule change clarified that OUCH port-entered Price to Comply Orders are now eligible for price adjustment either once or multiple times, depending on the election of the member firm.[6] The Exchange noted in the rule change that offering OUCH port users the ability to have NASDAQ reprice a Price to Comply Order multiple times will serve to reduce the excessive volume of orders entered into the System [7] and ultimately canceled.[8] Accordingly, a Price to Comply Order entered through an OUCH port that a member firm has designated for multiple price adjustment will be adjusted more than once in response to changes in the prevailing National Best Bid and Offer (''NBBO'') to move the displayed price closer to the original entered price and display the best possible price consistent with the provisions of Regulation NMS. Prior to the clarifying rule change, OUCH port-entered Price to Comply Orders that would lock or cross the market would be adjusted once and thereafter rest on the book. The Exchange has not implemented the recently-adopted changes [9] so that it could subsequently modify how the OUCH port-entered Price to Comply Orders will operate under Rule 4751(f)(7), as described below.

The Exchange has determined to modify Rule 4751(f)(7) so that a Price to Comply Order entered via an OUCH port designated for multiple price adjustment that would lock the market can be adjusted a maximum of two times—once upon entry and once again to move the displayed price to the original entered price when it becomes permissible under Regulation NMS to do so, thereby displaying the best possible price consistent with the provisions of Regulation NMS. Under the proposed rule change, such Price to Comply Orders that would cross the market upon entry would be price adjusted once upon entry to display at a permissible level and thereafter cancelled when the previously locking level becomes available. This cancellation allows the member to resubmit its order at a price more aggressive than the previously locking price should the member still desire to do so.[10] As such, and unlike as described in the recent rule change, the process applied to OUCH ports designated for multiple price adjustment will be similar to, yet different than, the process applied to RASH-entered Price to Comply Orders.

NASDAQ is not changing how Price to Comply Orders entered via an OUCH port not designated for multiple price adjustment operate. Such orders will continue to be adjusted once and thereafter remain on the book. Likewise, NASDAQ is not proposing to change how price adjusted orders are treated in terms of priority. Like RASH-entered Price to Comply Orders, each time the OUCH-entered order is price adjusted it will receive a new timestamp for purposes of determining its price/display/time priority.[11] As such, an

[3] ''Price to Comply Order'' is an order such that, if, at the time of entry, it would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers).

[4] 17 CFR 242.610.

[5] *See* Securities Exchange Act Release No. 67024 (May 18, 2012), 77 FR 31055 (May 24, 2012) (SR–NASDAQ–2012–060).

[6] Member firms must designate each OUCH protocol order port that it wishes to use with the multiple price adjustment functionality, and such ports will also be designated for automatic cancellation or ''kick out'' of other order types whose price was adjusted upon entry to prevent a violation of Rule 610(d) of Regulation NMS. In the absence of designation from a member firm, the Exchange will default the member's OUCH port(s) to single price adjustment.

[7] As defined by Rule 4751(a).

[8] The Exchange noted that the OUCH protocol is used by member firms that are able to submit a large volume of orders. Such member firm will often submit a Price to Comply Order at an aggressive price that it anticipates will be at the NBBO, but it is not submitted at the NBBO and is not executed after repricing because the market does not move to the adjusted order price. In such cases, the member firm will typically submit additional aggressive orders, which likewise are not executed. *Supra* note 5.

[9] *Supra* note 5.

[10] Similarly, orders other than Price to Comply Orders that are re-priced on entry due to Regulation NMS and submitted via OUCH ports designated for multiple price adjustment of Price to Comply Orders will be cancelled when the previously locking price level becomes available.

[11] As described in Rule 4757(a)(1).

OUCH-entered Price to Comply Order that is repriced upon entry will initially be prioritized among non-displayed orders at the locking price based on its time of entry. Upon the second repricing of an OUCH-entered Price to Comply Order that is entered at a locking price, the order will be prioritized among displayed orders at the previously locking price based on its time of repricing and thus is treated as a new displayed order in terms of priority. There is no guarantee that the OUCH-entered Price to Comply Order will receive priority amongst displayed orders when it becomes actionable after repricing, as other displayed orders may be entered before the Price to Comply Order is repriced. This priority treatment is identical to the treatment provided to RASH-entered Price to Comply Orders that are price adjusted. The Exchange will provide public notice five business days prior to the implementation date of the changes proposed herein, together with the changes proposed in the recent rule filing [12] not modified by this proposal, and such implementation date will be no later than thirty calendar days from the date of filing this proposal with the Commission.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and with Section 6(b)(5) of the Act [14] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASDAQ believes this proposal is consistent with the Exchange Act and, specifically, Rules 610 and 611 of Regulation NMS in that it is designed to prevent orders from locking and crossing the market or trading through protected quotes, while also promoting a more efficient market. In this regard, NASDAQ believes that the proposed rule change will promote the efficient use of the Exchange by reducing the number of orders entered into the market and ultimately canceled. The proposed rule change will accomplish this by providing the member firms that tend to enter the greatest number of such orders via OUCH ports an option to have the Exchange reprice two times a single order that would lock the market upon entry. NASDAQ also believes that permitting a high volume user the option to continue to have the Exchange reprice its Price to Comply Order only upon order entry, when appropriate, will ensure member firms with internal systems that act in reliance of this function will continue to operate without disruption.

[12] *Supra* note 5.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(6).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–084. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2012–084 and should be submitted on or August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17351 Filed 7–16–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67399; File No. SR–Phlx–2012–94]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Regarding Price Improvement XL

July 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on July 9, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1080(n), Price Improvement XL (''PIXL℠'') to extend, through July 18, 2013, a pilot program (the ''pilot'') concerning (i) the early conclusion of the PIXL Auction (as described below), and (ii) permitting orders of fewer than 50 contracts into the PIXL Auction. The current pilot is scheduled to expire July 18, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot through July 18, 2013.

Background

The Exchange adopted PIXL in October, 2010 as a price-improvement mechanism on the Exchange.[3] PIXL is a component of the Exchange's fully automated options trading system, PHLX XL® that allows an Exchange member (an ''Initiating Member'') to electronically submit for execution an order it represents as agent on behalf of a public customer, broker dealer, or any other entity (''PIXL Order'') against principal interest or against any other order it represents as agent (an ''Initiating Order'') provided it submits the PIXL Order for electronic execution into the PIXL Auction (''Auction'') pursuant to the Rule.

An Initiating Member may initiate a PIXL Auction by submitting a PIXL Order in one of three ways:

- First, the Initiating Member could submit a PIXL Order specifying a single price at which it seeks to execute the PIXL Order (a ''stop price'').
- Second, an Initiating Member could submit a PIXL Order specifying that it is willing to automatically match as principal or as agent on behalf of an Initiating Order the price and size of all trading interest and responses to the PIXL Auction Notification (''PAN,'' as described below) (''auto-match''), in which case the PIXL Order will be stopped at the National Best Bid/Offer (''NBBO'') on the Initiating Order side of the market (if 50 contracts or greater) or, if less than 50 contracts, the better of: (i) the PHLX Best Bid/Offer (''PBBO'') price on the opposite side of the market from the PIXL Order improved by at least one minimum price improvement increment, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO and that such price is at least one increment better than the limit of an order on the book on the same side as the PIXL Order.
- Third, an Initiating Member could submit a PIXL Order specifying that it is willing to either: (i) stop the entire order at a single stop price and auto-match PAN responses, as described below, together with trading interest, at a price or prices that improve the stop price to a specified price above or below which the Initiating Member will not trade (a ''Not Worse Than'' or ''NWT'' price); (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price; or (iii) stop the entire order at the NBBO on the Initiating Order side (if 50 contracts or greater) or the better of: (A) the PBBO price on the opposite side of the market from the PIXL Order improved by one minimum price improvement increment, or (B) the PIXL Order's limit price (if the order is a limit order) on the Initiating Order side provided in either case that such price is at or better than the NBBO (if for less than 50 contracts), and auto-match PAN responses and trading interest are at a price or prices that improve the stop price up to the NWT price. In all cases, if the PBBO on the same side of the market as the PIXL Order represents a limit order on the book, the stop price must be at least one minimum price improvement increment better than the booked limit order's limit price.

After the PIXL Order is entered, a PAN is broadcast and a one-second blind Auction ensues. Anyone may respond to the PAN by sending orders or quotes. At the conclusion of the Auction, the PIXL Order will be allocated at the best price(s).

Once the Initiating Member has submitted a PIXL Order for processing, such PIXL Order may not be modified or cancelled. Under any of the above circumstances, the Initiating Member's stop price or NWT price may be improved to the benefit of the PIXL Order during the Auction, but may not be cancelled.

After a PIXL Order has been submitted, a member organization submitting the order has no ability to control the timing of the execution. The execution is carried out by the Exchange's PHLX XL® automated options trading system and pricing is determined solely by the other orders

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108) (Order Granting Approval to a Proposed Rule Change Relating to a Proposed Price Improvement System, Price Improvement XL); Securities Exchange Act Release No. 65043 (August 5, 2011), 76 FR 49824 (August 11, 2011) (SR–Phlx–2011–104) (Extending Pilot for Price Improvement System, Price Improvement XL).

and quotes that are present in the Auction.

The Pilot

Three components of the PILX system were approved by the Commission on a pilot basis: (1) paragraphs (n)(i)(A)(2) [4] and (n)(i)(B)(2) of Rule 1080, relating to auction eligibility requirements; (2) paragraphs (n)(ii)(B)(4) and (n)(ii)(D) of Rule 1080, relating to the early conclusion of the PIXL Auction; and (3) paragraph (n)(vii) of Rule 1080, stating that there shall be no minimum size requirement of orders entered into PIXL. The pilots were approved for a pilot period expiring on July 18, 2012.[5] The Exchange notes that during the pilot period it has been required to submit, and has been submitting, certain data periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism.[6] The Exchange will continue to provide such data. The Exchange believes that, because the pilot has been operating for a relatively short amount of time, the proposed extension should afford the Commission additional time to evaluate the pilot.

The Exchange proposes to extend the pilot through July 18, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general and with Section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act [9] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that PIXL, including the rules to which the pilot applies, result in increased liquidity available at improved prices, with competitive final pricing out of the Initiating Member's complete control. The Exchange believes that PIXL promotes and fosters competition and affords the opportunity for price improvement to more options contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b-4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest because such waiver will allow the PIXL pilot programs to continue without interruption. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–94. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[4] On March 9, 2012, the Exchange filed a proposed rule change to clarify Exchange Rule 1080(n)(i)(A)(2). *See* Securities Exchange Act Release No. 66583 (March 13, 2012), 77 FR 16108 (March 19, 2012) (SR–Phlx–2012–032) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Price Improvement System, Price Improvement XL). The amendment reflected the correct price—at or better than the NBBO—at which an Initiating Member must guarantee the execution of a PIXL Order that the Initiating Member submits into a PIXL Auction.

[5] *See supra* note 3.

[6] *See* Exchange Rule 1080(n)(vii).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–94 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17327 Filed 7–16–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67398; File No. SR–Phlx–2012–88]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees to BX Options

July 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4[2] thereunder, notice is hereby given that, on June 28, 2012, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt certain Routing Fees to recoup costs incurred by the Exchange when routing to NASDAQ OMX BX, Inc. ("BX Options").

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on July 2, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to recoup costs that the Exchange incurs for routing and executing certain orders in equity options to BX Options.

The Exchange's Pricing Schedule at Section V currently includes the following Routing Fees for routing Customer, Professional, Firm, Broker-Dealer and Market Maker[3] orders to away markets.

Exchange	Customer	Professional	Firm/ broker-dealer/ specialist/ market maker
NYSE AMEX	$0.11	$0.31	$0.55
BATS Penny	0.55	0.55	0.55
BATS non-Penny	0.86	0.91	0.91
BOX	0.11	0.11	0.55
CBOE	0.11	0.31	0.55
CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs	0.29	0.31	0.55
C2	0.55	0.56	0.55
ISE	0.11	0.29	0.55
ISE Select Symbols[13]	0.31	0.39	0.55
NYSE ARCA (Penny Pilot)	0.55	0.55	0.55
NYSE ARCA (Standard)	0.11	0.11	0.55
NOM	0.54	0.54	0.55
NOM–MNX	0.56	0.56	0.55
NOM–NDX	0.11	0.81	0.81

[13] These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

The Exchange is proposing to adopt the following Routing Fees when routing to the BX Options:

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For the purposes of Routing Fees, a Market Maker includes Specialists (*see* Rule 1020) and ROTs (Rule 1014(b)(i) and (ii), which includes SQTs (*see* Rule 1014(b)(ii)(A)) and RSQTs (*see* Rule 1014(b)(ii)(B)).

Exchange	Customer	Professional	Firm/ broker-dealer/ specialist/ market maker
BX Options Market	$0.11	$0.54	$0.54

BX Options received approval to operate a new options market[4] and filed to adopt various fees and rebates which would become operative on July 2, 2012. Specifically, BX Options will assess a Fee to Remove Liquidity of $0.43 per contract to BX Options Market Makers and Non-Customers which includes Professionals, Firms, Broker-Dealers and Non-BX Options Marker Makers.[5] Customers would not be assessed a Fee to Remove Liquidity on BX Options. The Exchange is seeking to adopt new Routing Fees to account for these new fees and other routing costs incurred by the Exchange when routing to BX Options as of July 2, 2012.

Nasdaq Options Services LLC (''NOS''), a member of the Exchange, is the Exchange's exclusive order router.[6] NOS serves as the Routing Facility of BX Options. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, and technical costs associated with routing.[7] The Exchange would therefore assess Customers $0.11 per contract, Firms would be assessed $0.54 per contract, Market Makers would be assessed $0.54 per contract and Professionals would be assessed $0.54 per contract.[8] The Exchange proposes to title the new fees ''BX Options.''

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed BX Options Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders to BX Options on behalf of members, respectively. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs that are incurred by the Exchange. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the remove fees assessed to market participants by BX Options, plus clearing and other administrative and technical fees for the execution of Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders when routed to BX Options. The Exchange also believes that the proposed BX Options Routing Fees are equitable and not unfairly discriminatory because they would be uniformly applied to all Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are routed to BX Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, Phlx Routing Fees seek to recoup costs for Routing Orders to other exchanges on behalf of its members. Options Participants may choose to mark the order as ineligible for routing to avoid incurring these fees. In addition, a member may designate an order as not available for routing to avoid routing fees.[11]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–88 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

[4] *See* Securities Exchange Act Release No. 67256 (June 26, 2012) (SR–BX–2012–030).

[5] *See* Securities Exchange Act Release No. 67339 (SR–BX–2012–043). This filing will become operative on July 2, 2012.

[6] *See* Chapter VI, Section 11(e) (Order Routing).

[7] In addition to membership fees and transaction fees, the Exchange also incurs an Options Regulatory Fee when routing to an away market that assesses that fee.

[8] The Exchange's proposed Routing Fees for BX would include the Fees for Removing Liquidity of $0.43 per contract, a $0.06 clearing cost and another $0.05 per contract associated with administrative and technical costs associated with operating NOS, a total of $0.54 per contract. The Exchange would only assess a Customer the $0.06 clearing cost and another $0.05 per contract associated with administrative and technical costs associated with operating NOS (a total of $0.11 per contract) because a Customer is not assessed a Fee for Removing Liquidity on BX.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] *See* Rules 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–88. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–88 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17326 Filed 7–16–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67411; File Nos. SR–NASDAQ–2012–043; SR–NYSEArca–2012–37]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes Relating to Market Maker Incentive Programs for Certain Exchange-Traded Products

July 11, 2012.

I. Introduction

On March 23, 2012, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (''NASDAQ Proposal'') to establish the Market Quality Program (''MQP''). On March 29, 2012, NASDAQ submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on April 12, 2012.[4] The Commission initially received fifteen comment letters on the NASDAQ Proposal.[5] On May 18, 2012, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a longer period within which to either approve the NASDAQ Proposal, disapprove the NASDAQ Proposal, or institute proceedings to determine whether to disapprove the NASDAQ Proposal.[7] The Commission received three additional comment letters on the NASDAQ Proposal.[8] On July 6, 2012, the Commission received NASDAQ's response to the comment letters.[9]

On April 27, 2012, NYSE Arca, Inc. (''NYSE Arca'' and together with NASDAQ, the ''Exchanges'') filed with the Commission, pursuant to Section 19(b)(1) of the Act [10] and Rule 19b–4 thereunder,[11] a proposed rule change (''NYSE Arca Proposal,'' and together with the NASDAQ Proposal, the ''SRO Proposals'') to create and implement, on a pilot basis, a Lead Market Maker (''LMM'') Issuer Incentive Program (''Fixed Incentive Program,'' and together with the MQP, the ''Programs'') for issuers of certain exchange-traded products listed on NYSE Arca. The NYSE Arca Proposal was published for comment in the **Federal Register** on May 17, 2012.[12] The Commission received two comment letters on the NYSE Arca Proposal.[13] On June 20, 2012, pursuant to Section 19(b)(2) of the Act,[14] the Commission designated a longer period within which to either approve the NYSE Arca Proposal, disapprove the NYSE Arca Proposal, or institute proceedings to determine whether to disapprove the NYSE Arca

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NASDAQ made a technical amendment to Item I of Exhibit 1 to delete an erroneous reference to the NASDAQ Options Market and replace it with a reference to NASDAQ.

[4] Securities Exchange Act Release No. 66765 (April 6, 2012), 77 FR 22042 (''NASDAQ Notice'').

[5] *See* Letter from Frank Choi, dated April 13, 2012 (''Choi Letter''); Letter from Christopher J. Csicsko, dated April 14, 2012 (''Csicsko Letter''); Letter from Jeremiah O'Connor III, dated April 14, 2012 (''O'Connor Letter''); Letter from Dezso J. Szalay, dated April 15, 2012 (''Szalay Letter''); Letter from Kathryn Keita, dated April 18, 2012; Letter (''Keita Letter''); Letter from Anonymous, dated April 18, 2012 (''Anonymous Letter''); Letter from Mark Connell, dated April 19, 2012 (''Connell Letter''); Letter from Timothy Quast, Managing Director, Modern Networks IR LLC, dated April 26, 2012 (''IR Letter''); Letter from Daniel G. Weaver, Ph.D., Professor of Finance, Rutgers Business School, dated April 26, 2012 (''Weaver Letter''); Letter from Amber Anand, Associate Professor of Finance, Syracuse University, dated April 29, 2012 (''Anand Letter''); Letter from Albert J. Menkveld, Associate Professor of Finance, VU University Amsterdam, dated May 2, 2012 (''Menkveld Letter''); Letter from James J. Angel, Associate Professor of Finance, Georgetown University, dated May 2, 2012 (''Angel Letter''); Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated May 3, 2012 (''NASDAQ ICI Letter''); Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated May 3, 2012 (''NASDAQ Vanguard Letter''); and Letter from Leonard J. Amoruso, General Counsel, Knight Capital Group, Inc., dated May 4, 2012 (''Knight Letter'').

[6] 15 U.S.C. 78s(b)(2).

[7] Securities Exchange Act Release No. 67022 (May 18, 2012), 77 FR 31050 (May 24, 2012). The Commission determined that it was appropriate to designate a longer period within which to take action on the NASDAQ Proposal so that it has sufficient time to consider the NASDAQ Proposal, the comments received, and any response to the comments submitted by NASDAQ. Accordingly, the Commission designated July 11, 2012 as the date by which it should either approve, disapprove, or institute proceedings to determine whether to disapprove the NASDAQ Proposal.

[8] *See* Letter from Gary L. Gastineau, Managing Member, ETF Consultants LLC, dated June 11, 2012 (''ETF Consultants Letter''); Letter from Rey Ramsey, President & CEO, TechNet, dated June 20, 2012 (''TechNet Letter''); and Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, dated July 3, 2012 (''MFA Letter'').

[9] *See* Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ, dated July 6, 2012 (''NASDAQ Response Letter'').

[10] 15 U.S.C. 78s(b)(1).

[11] 17 CFR 240.19b–4.

[12] Securities Exchange Act Release No. 66966 (May 11, 2012), 77 FR 29419 (''NYSE Arca Notice'').

[13] *See* Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated June 7, 2012 (''NYSE Arca Vanguard Letter''); and Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated June 7, 2012 (''NYSE Arca ICI Letter'').

[14] 15 U.S.C. 78s(b)(2).

Proposal.[15] The Commission received one additional comment letter on the NYSE Arca Proposal.[16]

This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the SRO Proposals. Institution of these proceedings, however, does not indicate that the Commission has reached any conclusions with respect to the SRO Proposals, nor does it mean that the Commission will ultimately disapprove the SRO Proposals. Rather, as addressed below, the Commission desires to solicit additional input from interested parties on the issues presented by the SRO Proposals.

II. Description of the SRO Proposals

In the SRO Proposals, each of NASDAQ and NYSE Arca separately propose to adopt listing fees and related market maker incentive programs for certain securities on a pilot basis, as further described below.

A. NASDAQ Proposal

As set forth in more detail in the NASDAQ Notice,[17] NASDAQ is proposing to amend its rules to add new NASDAQ Rule 5950 (Market Quality Program) to establish an MQP listing fee and related market maker incentive program, and to adopt new IM–2460–1 to exempt the MQP from NASDAQ Rule 2460 (Payment for Market Making), on a pilot basis. The MQP would be a voluntary program and participation in the program would be at the discretion of each MQP Company (as defined below), subject to the requirements set forth in the proposed rule.

1. Proposed NASDAQ Rule 5950 (Market Quality Program)

The proposed MQP would be a program designed to promote market quality in certain securities listed on NASDAQ (''MQP Securities'') on a voluntary basis.[18] MQP Securities may include Exchange Traded Funds (''ETFs''), Linked Securities (''LS''), and Trust Issued Receipts (''TIRs'') listed on NASDAQ pursuant to NASDAQ Rules 5705, 5710, and 5720, respectively.[19] An ''MQP Company'' [20] that lists an eligible MQP Security on NASDAQ would pay a listing fee as set forth in proposed NASDAQ Rule 5950 (''MQP Fee''), in addition to the standard (non-MQP) NASDAQ listing fee applicable to such MQP Security as set forth in the NASDAQ Rule 5000 Series (consisting of NASDAQ Rules 5000–5999).[21] NASDAQ represents that an MQP Fee would be used for the purpose of incentivizing one or more Market Makers [22] in the MQP Security (''MQP Market Maker'') to enhance the market quality of the MQP Security. Subject to the conditions set forth in the proposed rule, this incentive payment would be credited (''MQP Credit'') to one or more MQP Market Makers that make a quality market in the MQP Security pursuant to the MQP.[23]

a. Application and Withdrawal

An MQP Company that wants to have its MQP Security participate in the MQP, and a Market Maker that wants to participate in the MQP, would be required to each submit an application in the form prescribed by NASDAQ.[24] NASDAQ could, on a program-wide basis, limit the number of MQP Securities that any one MQP Company may list in the MQP.[25] In determining whether to limit the number of MQP Securities in the MQP, NASDAQ would consider all relevant information, including whether a restriction, if any, is in the best interest of NASDAQ, the MQP Company and the goals of the MQP, and investors.[26] NASDAQ could also, on a program-wide basis, limit the number of MQP Market Makers permitted to register in an MQP Security.[27] If such a limit were established, NASDAQ would allocate available MQP Market Maker registrations in a first-come-first-served fashion based on successful completion of an MQP Market Maker application.[28]

NASDAQ would provide notification on its Web site regarding: (i) The acceptance of an MQP Company and an MQP Market Maker into the MQP; (ii) the total number of MQP Securities that any one MQP Company may have in the MQP; (iii) the names of MQP Securities and the MQP Market Maker(s) in each MQP Security; and (iv) any limits on the number of MQP Market Makers permitted to register in an MQP Security.[29]

After an MQP Company is in the MQP for not less than two consecutive quarters but less than one year, it could voluntarily withdraw from the MQP on a quarterly basis.[30] The MQP Company would be required to notify NASDAQ in writing not less than one month prior to withdrawing from the MQP. Notwithstanding, NASDAQ could determine to allow an MQP Company to withdraw from the MQP earlier.[31] In making this determination, NASDAQ would take into account the volume and price movements in the MQP Security; the liquidity, size quoted, and quality of the market in the MQP Security; and any other relevant factors.[32] After an

[15] Securities Exchange Act Release No. 67222 (June 20, 2012), 77 FR 38116 (June 26, 2012). The Commission determined that it was appropriate to designate a longer period within which to take action on the NYSE Arca Proposal so that it has sufficient time to consider the NYSE Arca Proposal, the comments received, and any response to the comments submitted by NYSE Arca. Accordingly, the Commission designated August 15, 2012 as the date by which it should either approve, disapprove, or institute proceedings to determine whether to disapprove the NYSE Arca Proposal.

[16] *See* Letter from John T. Hyland, CFA, Chief Investment Officer, United States Commodity Funds LLC, dated June 27, 2012 (''USCF Letter'').

[17] *See supra* note 4.

[18] *See* proposed NASDAQ Rule 5950 Preamble. NASDAQ notes that MQP Securities do not encompass derivatives on such securities. *See* NASDAQ Notice, *supra* note 4, at 22043.

[19] *See* proposed NASDAQ Rule 5950(e)(1). The term ''Exchange Traded Fund'' includes Portfolio Depository Receipts and Index Fund Shares, which are defined in NASDAQ Rule 5705; the term ''Linked Security'' has the meaning given in NASDAQ Rule 5710; and the term ''Trust Issued Receipt'' has the meaning given in NASDAQ Rule 5720. *See* proposed NASDAQ Rules 5950(e)(2)–(4). NASDAQ notes that it believes that MQP Securities would predominantly, if not entirely, consist of ETFs. *See* NASDAQ Notice, *supra* note 4, at 22043.

[20] The term ''MQP Company'' is defined as a fund sponsor or other entity that lists one or more MQP Securities on NASDAQ pursuant to the MQP. *See* proposed NASDAQ Rule 5950(e)(7).

[21] *See* proposed NASDAQ Rule 5950 Preamble. The NASDAQ Rule 5000 Series contains rules related to the qualification, listing, and delisting of Companies on the NASDAQ Stock Market. The NASDAQ Rule 5100 Series discusses NASDAQ's general regulatory authority. The NASDAQ Rule 5200 Series sets forth the procedures and prerequisites for gaining a listing on the NASDAQ Stock Market, as well as the disclosure obligations of listed Companies. The NASDAQ Rule 5300, 5400, and 5500 Series contain the specific quantitative listing requirements for listing on the Global Select, Global Market, and Capital Market, respectively. The corporate governance requirements applicable to all Companies are contained in the NASDAQ Rule 5600 Series. Special listing requirements for securities other than common or preferred stock and warrants are contained in the NASDAQ Rule 5700 Series. The consequences of a failure to meet NASDAQ's listing standards are contained in the NASDAQ Rule 5800 Series. Listing fees are described in the NASDAQ Rule 5900 Series. The term ''Company'' is defined in NASDAQ Rule 5005(a)(6) as the issuer of a security listed or applying to list on NASDAQ, and may include an issuer that is not incorporated, such as, for example, a limited partnership.

[22] The term ''Market Maker'' has the meaning given in NASDAQ Rule 5005(a)(24). *See* proposed NASDAQ Rule 5950(e)(5).

[23] *See* proposed NASDAQ Rule 5950 Preamble.

[24] *See* proposed NASDAQ Rule 5950(a)(1).

[25] *See* proposed NASDAQ Rule 5950(a)(1)(A).

[26] *See* proposed NASDAQ Rule 5950(a)(1)(B). Factors that could be considered by NASDAQ include, but are not limited to, the current and expected liquidity characteristics of MQP Securities; the projected initial and continuing market quality needs of MQP Securities; and the trading characteristics of MQP Securities (*e.g.,* quoting, trading, and volume). *See* proposed NASDAQ Rule 5950(a)(1)(B)(i).

[27] *See* proposed NASDAQ Rule 5950(c)(3).

[28] *See* proposed NASDAQ Rule 5950(c)(3)(A).

[29] *See* proposed NASDAQ Rule 5950(a)(1)(C) and proposed NASDAQ Rule 5950(c)(3).

[30] *See* proposed NASDAQ Rule 5950(a)(2)(A).

[31] *Id.*

[32] *Id.*

MQP Company is in the MQP for one year or more, it could voluntarily withdraw from the MQP on a monthly basis, and would be required to notify NASDAQ in writing not less than one month prior to withdrawing from the MQP.[33] After an MQP Company is in the MQP for one year, the MQP and all obligations and requirements of the MQP would automatically continue on an annual basis, unless NASDAQ terminates the MQP by providing not less than one month prior notice of intent to terminate; the MQP Company withdraws from the MQP pursuant to the proposed rule; or the MQP Company is terminated from the MQP pursuant to proposed NASDAQ Rule 5950(d).[34]

After an MQP Market Maker is in the MQP for not less than one quarter, the MQP Market Maker could withdraw from the MQP on a quarterly basis. The MQP Market Maker would be required to notify NASDAQ in writing one month prior to withdrawing from the MQP.[35]

b. MQP Company Eligibility and Fee Liability

For an MQP Company to be eligible to have its MQP Security participate in the MQP, the following conditions would be required to be satisfied: (i) NASDAQ must have accepted the MQP Company's application in respect of such MQP Security, and must have accepted the application of at least one MQP Market Maker in the same MQP Security; (ii) the MQP Security must meet all requirements to be listed on NASDAQ as an ETF, LS, or TIR; and (iii) the MQP Security must meet all NASDAQ requirements for continued listing at all times the MQP Security participates in the MQP.[36]

An MQP Company participating in the MQP would be required to pay to NASDAQ an annual basic MQP Fee of $50,000 per MQP Security (''Basic MQP Fee''), which fee would be required to be paid in quarterly installments as billed by NASDAQ.[37] The Basic MQP Fee, which would fund the MQP Credit to be paid to the eligible MQP Market Maker(s), would be allocated 50% toward funding the ''Quote Share Payment'' and 50% toward funding the ''Trade Share Payment.''[38] Quote Share Payments would be based in equal proportions on: (i) Average quoted size at or better than NBBO; and (ii) average time spent quoting at or better than NBBO.[39] Trade Share Payments would be based upon each MQP Market Maker's share of total Qualified Trades in an MQP Security executed on the NASDAQ Market Center.[40]

An MQP Company could also pay an annual supplemental MQP Fee per MQP Security (''Supplemental MQP Fee''), which would also fund the MQP Credit to be paid to the eligible MQP Market Maker(s) and would be required to be paid in quarterly installments as billed by NASDAQ.[41] The Basic MQP Fee and Supplemental MQP Fee when combined could not exceed $100,000 per year.[42] The amount of the Supplemental MQP Fee, if any, would be determined by the MQP Company on an annual basis.[43] An MQP Company would be required to indicate the proportions between 0% and 100% in which the Supplemental MQP Fee would be allocated to the Quote Share Payment and/or the Trade Share Payment.[44] NASDAQ would provide notification on its Web site regarding the amount, if any, of any Supplemental MQP Fee and the Quote Share Payment/Trade Share Payment allocation determined by an MQP Company.[45]

The Basic MQP Fee and Supplemental MQP Fee, if any, would be in addition to the standard (non-MQP) NASDAQ listing fee applicable to the MQP Security and would not offset such standard listing fee.[46] At the beginning of a quarter, NASDAQ would bill each MQP Company for the quarterly portion of an MQP Company's Basic MQP Fee and Supplemental MQP Fee, if any, for each MQP Security, and each quarterly bill would be based on the MQP Credit earned by the MQP Market Maker(s) in each MQP Security for the immediately preceding quarter.[47] All revenue from the Basic MQP Fee and the Supplemental MQP Fee would be credited pro rata to the eligible MQP Market Maker(s) in an MQP Security, and any portion of an MQP Fee that is not credited to eligible MQP Market Makers would be refunded to the MQP Company.[48]

c. MQP Market Maker Eligibility and MQP Credit Distribution

For a Market Maker to be eligible to participate in the MQP, NASDAQ must have accepted such Market Maker's application in respect of an MQP Security and must have accepted the application of the MQP Company in respect of the same MQP Security.[49] In addition, to be eligible to receive a periodic MQP Credit, MQP Market Makers must, when making markets in an MQP Security, meet the applicable Market Maker obligations pursuant to NASDAQ Rule 4613,[50] and must also meet or exceed the following requirements on a monthly basis with respect to an MQP Security: (i) For at least 25% of the time when quotes can be entered in the Regular Market

[33] *See* proposed NASDAQ Rule 5950(a)(2)(B).

[34] *See* proposed NASDAQ Rule 5950(a)(3). Proposed NASDAQ Rule 5950(d) states, in part, that the MQP would terminate in respect of an MQP Security under the following circumstances: (A) An MQP Security sustains an average NASDAQ daily trading volume of two million shares or more for three consecutive months; (B) an MQP Company withdraws from the MQP, is no longer eligible to be in the MQP pursuant to the proposed rule, or ceases to make MQP fee payments to NASDAQ; (C) an MQP Security is delisted or is no longer eligible for the MQP; (D) an MQP Security does not have at least one MQP Market Maker for more than one quarter; or (E) an MQP Security does not, for two consecutive quarters, have at least one MQP Market Maker that is eligible for the MQP Credit.

[35] *See* proposed NASDAQ Rule 5950(a)(2)(C).

[36] *See* proposed NASDAQ Rule 5950(b)(1).

[37] *See* proposed NASDAQ Rule 5950(b)(2)(A).

[38] *See* proposed NASDAQ Rule 5950(b)(2)(A)(i). Each MQP Credit to be paid to the eligible MQP Market Maker(s) would be comprised of a ''Quote Share Payment'' that is based on Qualified Quotes, and a ''Trade Share Payment'' that is based on Qualified Trades. *See* proposed NASDAQ Rule 5950(c)(2)(A). A ''Qualified Quote'' represents attributable and displayed liquidity (either quotes or orders) entered by an MQP Market Maker in an MQP Security that is posted within 2% of the National Best Bid or Offer (''NBBO''). *See* proposed NASDAQ Rule 5950(c)(2)(A)(i). A ''Qualified Trade'' represents a liquidity-providing execution of a Qualified Quote on the NASDAQ Market Center. *See* proposed NASDAQ Rule 5950(c)(2)(A)(ii).

[39] *See* proposed NASDAQ Rule 5950(c)(2)(B)(ii).

[40] *See* proposed NASDAQ Rule 5950(c)(2)(B)(i).

[41] *See* proposed NASDAQ Rule 5950(b)(2)(B).

[42] *Id.*

[43] *See* proposed NASDAQ Rule 5950(b)(2)(B)(i).

[44] *See* proposed NASDAQ Rule 5950(b)(2)(B)(ii).

[45] *See* proposed NASDAQ Rule 5950(b)(2)(B)(iii).

[46] *See* proposed NASDAQ Rule 5950(b)(2)(C).

[47] *See* proposed NASDAQ Rule 5950(b)(2)(D).

[48] *See* proposed NASDAQ Rule 5950(b)(2)(E).

[49] *See* proposed NASDAQ Rule 5950(c)(1)(A). NASDAQ could also accept the MQP applications of multiple MQP Market Makers in the same MQP Security, subject to any limitation on the number of MQP Market Makers established pursuant to the proposed rule. *Id.*

[50] NASDAQ Rule 4613 states that market making obligations applicable to NASDAQ members that are registered as Market Makers include, among other things, quotation requirements and obligations as follows: For each security in which a member is registered as a Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis during regular market hours and shall enter and maintain a two-sided trading interest (''Two-Sided Obligation'') that is identified to NASDAQ as the interest meeting the obligation and is displayed in NASDAQ's quotation montage at all times. Interest eligible to be considered as part of a Market Maker's Two-Sided Obligation shall have a displayed quotation size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that a Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two-Sided Obligation. Unless otherwise designated, a ''normal unit of trading'' shall be 100 shares. After an execution against its Two-Sided Obligation, a Market Maker must ensure that additional trading interest exists in NASDAQ to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the NASDAQ book that will satisfy this obligation.

Session [51] as averaged over the course of a month, maintain at least 500 shares of attributable, displayed quotes or orders at the National Best Bid (''NBB'') or better, and at least 500 shares of attributable, displayed quotes or orders at the National Best Offer (''NBO'') or better; and (ii) for at least 90% of the time when quotes can be entered in the Regular Market Session as averaged over the course of a month, maintain at least 2,500 shares of attributable, displayed posted liquidity on the NASDAQ Market Center [52] that are priced no wider than 2% away from the NBB, and at least 2,500 shares of attributable, displayed posted liquidity on the NASDAQ Market Center that are priced no wider than 2% away from the NBO.[53]

MQP Credits for each MQP Security would be calculated monthly and credited quarterly on a pro rata basis to one or more eligible MQP Market Makers.[54] As described above, each MQP Credit would be comprised of a ''Quote Share Payment'' that is based on Qualified Quotes, and a ''Trade Share Payment'' that is based on Qualified Trades.[55] Quote Share Payments and Trade Share Payments would be funded by Basic MQP Fees and Supplemental MQP Fees, if any.[56]

An MQP Credit would be credited quarterly to an MQP Market Maker on a pro rata basis for each month during such quarter that an MQP Market Maker is eligible to receive a credit pursuant to the proposed rule.[57] The calculation to establish the eligibility of an MQP Market Maker would be done on a monthly basis.[58]

d. Termination of MQP

The MQP would terminate in respect of an MQP Security under any of the following circumstances: (i) Such MQP Security sustains an average NASDAQ daily trading volume (''ATV'') of 2,000,000 shares or more for three consecutive months; (ii) an MQP Company withdraws such MQP Security from the MQP, is no longer eligible to be in the MQP, or ceases to make MQP Fee payments to NASDAQ; (iii) such MQP Security is delisted or is no longer eligible for the MQP; (iv) such MQP Security does not have at least one MQP Market Maker for more than one quarter; or (v) such MQP Security does not, for two consecutive quarters, have at least one MQP Market Maker that is eligible for MQP Credit.[59] Any MQP Credits remaining upon termination of the MQP in respect of an MQP Security would be distributed on a pro rata basis to the MQP Market Makers that made a market in such MQP Security and were eligible to receive MQP Credits pursuant to the proposed rule, or, if no MQP Market Makers qualify, refunded to the MQP Company.[60] Termination of an MQP Company, MQP Security, or MQP Market Maker would not preclude NASDAQ from allowing re-entry into the MQP where NASDAQ deems proper.[61]

e. Pilot Basis

As proposed, the MQP would be effective for a one-year pilot period that would commence when the MQP is implemented by NASDAQ's acceptance of an MQP Company and relevant MQP Market Maker into the MQP and would end one year after implementation.[62]

During the pilot period, NASDAQ would periodically provide information to the Commission about market quality in respect of the MQP. Specifically, NASDAQ would submit monthly reports to the Commission about market quality in respect of the MQP, which reports would endeavor to compare, to the extent practicable, securities before and after they are in the MQP, and would include information regarding the MQP such as: (i) Rule 605 metrics; [63] (ii) volume metrics; (iii) number of MQP Market Makers; (iv) spread size; and (v) availability of shares at the NBBO.[64] The first report would be submitted within sixty days after the MQP becomes operative.[65]

2. Proposed IM–2460–1 Market Quality Program

As part of its proposal to establish the MQP by adding new NASDAQ Rule 5950, NASDAQ is proposing to amend NASDAQ Rule 2460 (Payments for Market Making), which prohibits direct or indirect payment by an issuer to a Market Maker, to adopt a new interpretive provision to the rule.[66] Specifically, NASDAQ is proposing to adopt new IM–2460–1 (Market Quality Program) to provide that NASDAQ Rule 2460 would not be applicable to a member that is accepted into the MQP pursuant to proposed NASDAQ Rule 5950 or to a person that is associated with such member for their conduct in connection with the MQP.[67]

3. Surveillance

NASDAQ represents that its surveillance procedures are adequate to properly monitor the trading of the MQP Securities on NASDAQ during all trading sessions, and to detect and deter violations of NASDAQ rules and applicable federal securities laws. Trading of the MQP Securities through NASDAQ would be subject to FINRA's surveillance procedures for derivative

[51] The term ''Regular Market Session'' has the meaning given in NASDAQ Rule 4120(b)(4)(D). *See* proposed NASDAQ Rule 5950(e)(8).

[52] The term ''NASDAQ Market Center'' has the meaning given in NASDAQ Rule 4751(a). *See* proposed NASDAQ Rule 5950(e)(6).

[53] *See* proposed NASDAQ Rule 5950(c)(1)(B). NASDAQ provides the following examples to illustrate these market quality requirements:

Regarding the first market quality standard (25%), in an MQP Security where the NBBO is $25.00 × $25.10, for a minimum of 25% of the time when quotes can be entered in the Regular Market Session as averaged over the course of a month, an MQP Market Maker must maintain bids at or better than $25.00 for at least 500 shares and must maintain offers at or better than $25.10 for at least 500 shares. Thus, if there were 20 trading days in a given month and the MQP Market Maker met this requirement 20% of the time when quotes can be entered in the Regular Market Session for 10 trading sessions and 40% of the time when quotes can be entered in the Regular Market Session for 10 trading sessions then the MQP Market Maker would have met the requirement 30% of the time in that month.

Regarding the second market quality standard (90%), in an MQP Security where the NBBO is $25.00 × $25.10, for a minimum of 90% of the time when quotes can be entered in the Regular Market Session as averaged over the course of a month, an MQP Market Maker must post bids for an aggregate of 2,500 shares between $24.50 and $25.00, and post offers for an aggregate of 2,500 shares between $25.10 and $25.60. Thus, if there were 20 trading days in a given month and the MQP Market Maker met this requirement 88% of the time when quotes can be entered in the Regular Market Session for 10 trading sessions and 98% of the time when quotes can be entered in the Regular Market Session for 10 trading sessions then the MQP Market Maker would have met the requirement 93% of the time in that month.

See NASDAQ Notice, *supra* note 4, at 22049.

[54] *See* proposed NASDAQ Rule 5950(c)(2).

[55] *See supra* notes 38–40 and accompanying text.

[56] *See* proposed NASDAQ Rule 5950(c)(2)(B)(iii).

[57] *See* proposed NASDAQ Rule 5950(c)(2)(C).

[58] *Id.* For example, if during a quarter an MQP Market Maker was eligible to receive a credit for two out of three months, such MQP Market Maker would receive a quarterly pro rata MQP Credit for those two months. *See* NASDAQ Notice, *supra* note 4, at 22049.

[59] *See* proposed NASDAQ Rule 5950(d)(1).

[60] *See* proposed NASDAQ Rule 5950(d)(2).

[61] *See* proposed NASDAQ Rule 5950(d)(3).

[62] *See* proposed NASDAQ Rule 5950(f).

[63] 17 CFR 242.605.

[64] *See* NASDAQ Notice, *supra* note 4, at 22049.

[65] *Id.*

[66] In relevant part, NASDAQ Rule 2460 provides that ''[n]o member or person associated with a member shall accept any payment or other consideration, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith.''

[67] *See* proposed IM–2460–1. NASDAQ notes that, based on discussions with the Financial Industry Regulatory Authority (''FINRA''), it expects FINRA to file a proposed rule change to exempt the MQP from FINRA Rule 5250. *See* NASDAQ Notice, *supra* note 4, at 22042. Similar to NASDAQ Rule 2460, FINRA Rule 5250 (formerly NASD Rule 2460) prohibits FINRA members from directly or indirectly accepting payment from an issuer of a security for acting as a market maker. *See* Securities Exchange Act Release No. 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997) (SR–NASD–97–29) (''NASD Rule 2460 Approval Order'').

products including ETFs.[68] NASDAQ may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members or affiliates of ISG and from listed MQP Companies and public and non-public data sources such as, for example, Bloomberg.

B. NYSE Arca Proposal

As set forth in more detail in the NYSE Arca Notice,[69] NYSE Arca proposes to adopt new NYSE Arca Equities Rule 8.800 to establish and implement, on a pilot basis, the Fixed Incentive Program for issuers of certain exchange-traded products (''ETPs'') listed on NYSE Arca, to incentivize Market Makers to undertake LMM assignments in ETPs. Pursuant to the NYSE Arca Proposal, an issuer of an ETP that participates in the proposed Fixed Incentive Program would elect to pay an ''Optional Incentive Fee'' to NYSE Arca, in an amount ranging from $10,000 to $40,000 per year,[70] and, subject to the requirements set forth in the proposed rule, a Market Maker accepting an LMM assignment in an ETP in the Fixed Incentive Program would receive a payment from NYSE Arca (''LMM Payment'') in an amount equal to the Optional Incentive Fee, less a 5% NYSE Arca administration fee. The NYSE Arca Proposal would not alter the current requirements and obligations of LMMs under NYSE Arca rules or any policies and procedures related to LMMs.[71]

1. Proposed NYSE Arca Equities Rule 8.800 (Terms of Fixed Incentive Program)

a. Eligibility for the Fixed Incentive Program

An ETP would be eligible to participate in the Fixed Incentive Program if it is listed on NYSE Arca as of the commencement of the pilot period or becomes listed during the pilot period, and the listing is under NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(5) (Equity Gold Shares), 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities), 8.100 (Portfolio Depositary Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.600 (Managed Fund Shares), or 8.700 (Managed Trust Securities).[72]

To be eligible to participate in the Fixed Incentive Program, an issuer would be required to be current in all payments due to NYSE Arca if it had other securities listed on NYSE Arca.[73] In addition, the issuer would be required to be current in all payments due to NYSE Arca and to be compliant with continuing listing standards for the ETP proposed for inclusion if the issuer elected to participate in the Fixed Incentive Program after listing such ETP on NYSE Arca.[74]

b. Application and Withdrawal

An issuer that wishes to have an ETP participate in the Fixed Incentive Program would be required to submit a written application in a form prescribed by NYSE Arca for each ETP.[75] An issuer would not be permitted to have more than five existing ETPs (ETPs that are listed on NYSE Arca prior to the pilot) participate in the Fixed Incentive Program.[76] NYSE Arca would communicate the ETPs proposed for inclusion in the Fixed Incentive Program on a written solicitation that is sent to all qualified LMM firms along with the Optional Incentive Fee the issuer proposes to pay for each ETP.[77] The permitted range for the Optional Incentive Fee would be set forth in the Exchange's Fee Schedule, and, as proposed, would be between $10,000 and $40,000 per year.[78] The issuer and the LMM thereafter would agree upon the final Optional Incentive Fee for each ETP.[79] If more than one qualified LMM proposed to serve as such, the issuer would choose the LMM.[80] NYSE Arca would provide notification on its Web site regarding the ETPs participating in the Fixed Incentive Program and the assigned LMMs.[81]

If an ETP no longer meets continuing listing standards or is being liquidated, it would be automatically withdrawn from the Fixed Incentive Program as of the ETP suspension date.[82]

NYSE Arca, in its discretion, could allow an issuer to withdraw an ETP from the Fixed Incentive Program before the end of the pilot if the assigned LMM is unable to meet its minimum performance standards for two of the three months of a quarter or for five months during the pilot and no other qualified Equity Trading Permit Holder is able to take over the assignment to become the new LMM for the ETP.[83]

An LMM could withdraw from all of its ETP assignments in the Fixed Incentive Program.[84] Furthermore, NYSE Arca, in its discretion, could allow an LMM to withdraw from a particular ETP before the end of the pilot period if NYSE Arca determines that there are extraneous circumstances that prevent the LMM from meeting its minimum performance standards for such ETP that do not affect its other ETP assignments in the Fixed Incentive Program.[85]

If the LMM for a particular ETP does not meet or exceed its minimum performance standards for any two of

[68] FINRA surveils trading on NASDAQ pursuant to a regulatory services agreement. NASDAQ is responsible for FINRA's performance under this regulatory services agreement.

[69] *See supra* note 12.

[70] An issuer of an ETP that participates in the proposed Fixed Incentive Program would continue to pay the currently applicable Listing and Annual Fees. Under the current Fee Schedule for listings, an issuer of an ETP is required to pay a Listing Fee that ranges from $5,000 to $45,000. ETP issuers also pay a graduated Annual Fee based on the number of shares of the ETP that are outstanding, which ranges $5,000 to $55,000. *See* NYSE Arca Notice, *supra* note 12, at 29419.

[71] *See* NYSE Arca Notice, *supra* note 12, at 29422. An LMM is subject to the obligations for Market Makers set forth in NYSE Arca Equities Rule 7.23 and the minimum performance standards that are referenced in NYSE Arca Equities Rule 7.24. Under NYSE Arca Equities Rule 7.24, the minimum performance standards include: (i) Percent of time at the NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; (iv) average quoted spread; and (v) in the event the security is a derivative security, the ability to transact in underlying markets. An LMM's minimum performance standards are higher than those of a Designated Market Maker and are described in an official NYSE Arca policy titled *NYSE Arca LMM Requirements,* which may be amended from time to time. The minimum performance standards are measured daily and reviewed as a monthly average. *See id.* at 29420, n.5.

[72] *See* proposed NYSE Arca Equities Rule 8.800(a).

[73] *See* proposed NYSE Arca Equities Rule 8.800(b)(2).

[74] *See id.*

[75] *See* proposed NYSE Arca Equities Rule 8.800(b)(1). An issuer could elect to participate at the time of listing or thereafter at the beginning of each quarter during the pilot period. *See id.*

[76] *See id.*

[77] *See id.* The written solicitation would be included in the Green Sheet, which is the common term for an email communication sent by NYSE Arca staff members to all qualified LMMs prior to an LMM selection. The Green Sheet includes, among other things, the name, symbol, and description of the ETP(s) as well as the name of the issuer and a link to the ETP prospectus. A qualified LMM must complete the application for a specific ETP or group of ETPs. *See* NYSE Arca Notice, *supra* note 12, at 29421, n.11.

[78] *See id. See also* proposed amendment to NYSE Arca's Listing Fees Schedule (as defined below).

[79] *See* proposed NYSE Arca Equities Rule 8.800(b)(1).

[80] *See id.*

[81] *See* NYSE Arca Notice, *supra* note 12, at 29420, n.10.

[82] *See* proposed NYSE Arca Equities Rule 8.800(e)(1).

[83] *See* proposed NYSE Arca Equities Rule 8.800(e)(2).

[84] *See* proposed NYSE Arca Equities Rule 8.800(e)(3).

[85] *See id.*

the three months of a quarter or five months during the pilot, or chooses to withdraw from the Fixed Incentive Program (or from a particular ETP in the Fixed Incentive Program), and at least one other qualified Market Maker has agreed to become the assigned LMM under the Fixed Incentive Program, then the ETP would be reallocated and the issuer may select another LMM and renegotiate the Optional Incentive Fee in accordance with the solicitation process set forth in the proposed rule.[86]

c. Payment of Optional Incentive Fee

As discussed above, as proposed, the permitted range for the Optional Incentive Fee would be between 10,000 and 40,000 per year, and the issuer and the LMM assigned to an ETP would agree upon the final Optional Incentive Fee for each ETP. The Optional Incentive Fee for each ETP would be paid by the issuer to NYSE Arca in quarterly installments at the beginning of each quarter and prorated if the issuer commences participation in the Fixed Incentive Program for an ETP after the beginning of a quarter.[87] The issuer would receive a prorated credit from NYSE Arca following the end of the quarter if the LMM does not meet its minimum performance standards in any given month in such quarter for an ETP.[88] The credit would be applied against the issuer's next quarterly installment of the Optional Incentive Fee for the ETP, or otherwise credited or refunded to the issuer if the ETP is withdrawn from the Fixed Incentive Program.[89]

NYSE Arca would credit an LMM for the LMM Payment in an amount equal to the Optional Incentive Fee paid by the issuer, less a NYSE Arca administration fee set forth in the Fee Schedule, which, as proposed, would initially be 5%.[90] An LMM that receives an LMM Payment would not be eligible for the LMM transaction fees and credits set forth in the Trading Fee Schedule for such ETP while participating in the Fixed Incentive Program, but would instead be subject to the standard transaction fees and credits applicable to Equity Trading Permit Holders and Market Makers set forth in the Trading Fee Schedule for transactions in such ETP during that quarter.[91]

NYSE Arca would credit an LMM for the LMM Payment at the end of each quarter and, if an LMM does not meet or exceed its minimum performance standards for the ETP for a particular month, then the LMM Payment would be prorated accordingly.[92]

If an issuer does not pay its quarterly installments to NYSE Arca on time and the ETP continues to be listed, NYSE Arca would continue to credit the LMM in accordance with the proposed rule, except that after two quarters, if an issuer is not current in its quarterly installments for an ETP, such ETP would be automatically terminated from the Fixed Incentive Program.[93]

2. Proposed Amendments to Listing Fee Schedule and Trading Fee Schedule

To implement the Fixed Incentive Program, NYSE Arca also proposes to amend its Fee Schedules.[94] NYSE Arca proposes to amend its Listing Fee Schedule to provide that the Optional Incentive Fee under proposed NYSE Arca Equities Rule 8.800 may range from $10,000 to $40,000 per year. In addition, NYSE Arca proposes to amend its Trading Fee Schedule to provide that, in accordance with proposed NYSE Arca Equities Rule 8.800, at the end of each quarter, NYSE Arca would credit the LMM assigned to an ETP the Optional Incentive Fee, less a 5% NYSE Arca administration fee. NYSE Arca further proposes to amend its Trading Fee Schedule to provide that an LMM that receives an LMM Payment under proposed NYSE Arca Equities Rule 8.800 would be subject to the standard transaction fees and credits applicable to Equity Trading Permit Holders and Market Makers set forth in the Trading Fee Schedule for transactions in such ETP during that quarter, instead of the LMM transaction fees and credits set forth in the Trading Fee Schedule.[95]

3. Pilot Program

The Fixed Incentive Program would be implemented on a pilot basis and would be offered to issuers from the date of implementation, which would occur no later than 90 days after the effective date of the NYSE Arca Proposal, until December 31, 2013.[96] During the course of the pilot period, NYSE Arca would assess the terms of the Fixed Incentive Program and would submit a rule filing to the Commission as necessary if it determines that any of the terms should be changed. At the end of the pilot, NYSE Arca would determine whether to continue or discontinue the pilot or make it permanent and submit a rule filing to the Commission as necessary.[97]

During the pilot program, the Exchange would provide the Commission with certain market quality data on a confidential basis each month, including, for all ETPs listed as of the date of implementation of the pilot program and listed during the pilot (for comparative purposes), volume metrics, NBBO bid/ask spread differentials, LMM participation rates, NYSE Arca market share, LMM time spent at the inside, LMM time spent within $0.03 of the inside, percent of time NYSE Arca has the best price with the best size, LMM quoted spread, LMM quoted depth, and Rule 605 statistics (one-month delay).[98] In addition, NYSE Arca would provide such other data as may be periodically requested by the Commission.[99]

C. Comparison of the SRO Proposals

As further discussed below, the Commission received comments requesting that it consider the SRO Proposals together, to allow commenters to compare and contrast the different approaches and assist the Commission in considering the overall issues raised

[86] *See* proposed NYSE Arca Equities Rule 8.800(e)(4). The reallocation process would be required to be completed no sooner than the end of the current quarter and no later than the end of the following quarter. *See id.*

[87] *See* proposed NYSE Arca Equities Rule 8.800(c)(1).

[88] *See id.*

[89] *See id.*

[90] *See* proposed NYSE Arca Equities Rule 8.800(d)(1) and proposed amendment to NYSE Arca's Trading Fees Schedule (as defined below).

[91] *See* proposed NYSE Arca Equities Rule 8.800(d)(1). NYSE Arca generally employs a maker-taker transactional fee structure, whereby an Equity Trading Permit Holder that removes liquidity is charged a fee (''Take Rate''), and an Equity Trading Permit Holder that provides liquidity receives a credit (''Make Rate''). The Take Rate for LMMs is currently $0.0025 per share. The Make Rate for LMMs is currently between $0.0035 and $0.0045 per share depending on consolidated average daily volume. Standard NYSE Arca Tape B Make Rates (rebates paid for adding liquidity) range from $0.0022 to $0.0033 per share. Standard NYSE Arca Tape B Take Rates (fees charged for removing liquidity) range from $0.0026 to $0.0030 per share. *See* NYSE Arca Notice, *supra* note 12, at 29429, n.8.

[92] *See* proposed NYSE Arca Equities Rule 8.800(d)(2). LMM Payments would be paid directly by NYSE Arca from its general revenues. *See* NYSE Arca Notice, *supra* note 12, at 29421.

[93] *See* proposed NYSE Arca Equities Rule 8.800(c)(2).

[94] NYSE Arca has one Schedule of Fees and Charges for Exchange Services that is for listings (''Listing Fee Schedule'') and another that is for trade-related charges (''Trading Fee Schedule''). To differentiate them, NYSE Arca proposes to change the name of the former to ''SCHEDULE OF FEES AND CHARGES FOR EXCHANGE LISTING SERVICES.'' *See* NYSE Arca Notice, *supra* note 12 at 29422.

[95] *See supra* note 91 and accompanying text.

[96] *See* NYSE Arca Notice, *supra* note 12, at 29422.

[97] *See* NYSE Arca Notice, *supra* note 12, at 29422.

[98] *See id. See also* 17 CFR 242.605.

[99] *Id.* NYSE Arca notes that, based upon discussions with FINRA, subsequent to NYSE Arca's filing of the NYSE Arca Proposal, FINRA would file an immediately effective rule change indicating that participation by LMMs and issuers in the Fixed Incentive Program would not be prohibited by FINRA Rule 5250. *See* NYSE Arca Notice, *supra* note 12, at 29423, n.17.

by the SRO Proposals.[100] Both of the SRO Proposals would establish pilot programs that would allow issuers of certain types of securities to pay additional listing fees for additional liquidity services. In particular, issuers would make payments to the exchange that the exchange would then pay to a market maker(s) in that issuer's security. While there are a number of similarities between the SRO Proposals, there are also a number of differences between the two. Although not an exhaustive comparison, below is a summary of the more significant differences between the SRO Proposals:

- Under NASDAQ's proposed MQP, MQP Securities may include Exchange Traded Funds (''ETFs''), Linked Securities (''LS''), and Trust Issued Receipts (''TIRs'') listed on NASDAQ pursuant to NASDAQ Rules 5705, 5710, and 5720, respectively. Under NYSE Arca's proposal, an ETP would be eligible to participate in the Fixed Incentive Program if it is listed on NYSE Arca under NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(5) (Equity Gold Shares), 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities), 8.100 (Portfolio Depositary Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.600 (Managed Fund Shares), or 8.700 (Managed Trust Securities).
- Under NASDAQ's proposed MQP, only ETPs that have an ATV of less than 2,000,000 would be eligible for the MQP, and the MQP would terminate with respect to an MQP Security if the security obtains 2,000,000 ATV or greater for three consecutive months. There is no similar trading volume threshold for ETPs to be eligible to participate in NYSE Arca's proposed Fixed Incentive Program or that would trigger termination of such program.
- MQP Market Makers participating in NASDAQ's proposed MQP would be subject to higher performance standards than those applicable to Market Makers not participating in the MQP. Under NYSE Arca's proposed Fixed Incentive Program, participating LMMs would be subject to the same performance standards as LMMs not participating in the Fixed Incentive Program.
- Under NYSE Arca's proposed Fixed Incentive Program, only one market maker, the LMM, would be assigned to each ETP in the Fixed Incentive Program, and such LMM would receive the entire LMM Payment, provided it met the existing LMM performance standards. Under NASDAQ's proposed MPQ, multiple competing MQP Market Makers could be assigned to an MQP Security (although NASDAQ would retain discretion to restrict the number of MQP Market Makers in an MQP Security), and such MQP Market Makers would be compensated on a pro rata basis (provided they met the required performance standards) based upon Qualified Quotes and Qualified Trades.
- Pursuant to NASDAQ's proposed MQP, an MQP Company participating in the MQP would be required to pay a fixed Basic MQP Fee of $50,000, and, at its discretion, could choose to pay a Supplemental MQP Fee of up to an additional $50,000. The payment by an MQP Company of the Supplemental MQP Fee and the amount of such fee would be disclosed by NASDAQ on its Web site. Under the NYSE Arca Proposal, an issuer participating in the Fixed Incentive Program would be required to pay the Optional Incentive Fee in an amount between $10,000 and $40,000, which amount would be negotiated between the issuer and the LMM assigned to such issuer's ETP, and the final amount of such Optional Incentive Fee would not be publicly disclosed.
- Under the proposed Fixed Incentive Program, NYSE Arca, in its discretion, could allow an issuer to withdraw an ETP from the Fixed Incentive Program before the end of the pilot only if the assigned LMM is unable to meet its minimum performance standards for two of the three months of a quarter or for five months during the pilot, and no other qualified Equity Trading Permit Holder is able to take over the assignment and become the new LMM for the ETP. Under NASDAQ's proposed MQP, an MQP Company could voluntarily withdraw from the MQP on a quarterly basis after it has been in the MQP for two consecutive quarters, or on a monthly basis after it has been in the MQP for one year.
- Under NYSE Arca's proposed Fixed Incentive Program, an LMM could withdraw from all of its ETP assignments. In addition, NYSE Arca, in its discretion, could allow an LMM to withdraw from a particular ETP before the end of the pilot period if NYSE Arca determines that there are extraneous circumstances that prevent the LMM from meeting its minimum performance standards for such ETP that do not affect its other ETP assignments in the Fixed Incentive Program. Under NASDAQ's proposed MQP, an MQP Market Maker that is in the MQP for not less than one quarter could withdraw from the MQP on a quarterly basis. In such a case, the MQP Market Maker would be required to notify NASDAQ in writing not less than one month prior to withdrawing.
- During the pilot period, NASDAQ would provide the Commission with certain market quality data for the MQP Securities, as further described above, to allow the Commission to assess the impact of the MQP. Under the NYSE Arca Proposal, NYSE Arca would provide the Commission with certain market quality data for ETPs in the Fixed Incentive Program, and also for ETPs not participating in the program, to allow the Commission to compare such metrics. NYSE Arca expressly indicates that such data would be provided to the Commission on a confidential basis.

III. Summary of Comments and Responses to Comments

A. Comments to NASDAQ'S Proposal and NASDAQ Response Letter

The Commission received 18 comment letters on the NASDAQ Proposal.[101] Ten commenters generally supported the proposal,[102] seven commenters opposed the proposal,[103] and one commenter neither supported nor opposed the proposal, but requested a longer comment period to have sufficient time to consider the issues raised by the proposal.[104]

In the NASDAQ Response Letter, NASDAQ reiterated its belief that the MQP will be beneficial to issuers, investors, and other market participants, and to the economy in general by ''significantly enhancing the quality of the market and trading in listed securities.'' [105] In support of its proposal, NASDAQ referenced the commenters that submitted letters generally in favor of the proposed MQP.[106] NASDAQ also responded to

[100] *See infra* notes 203 and 247 and accompanying text.

[101] *See supra* notes 5 and 8.

[102] *See generally* Anonymous Letter, Weaver Letter, Anand Letter, Menkveld Letter, Angel Letter, NASDAQ ICI Letter, Knight Letter, ETF Consultants Letter, TechNet Letter, and MFA Letter.

[103] *See generally* Choi Letter, Csickso Letter, O'Connor Letter, Szalay Letter, Keita Letter, Connell Letter, and IR Letter.

[104] *See* NASDAQ Vanguard Letter at 1–2.

[105] *See* NASDAQ Response Letter at 1. NASDAQ also cited recent legislation proposed subsequent to the NASDAQ Notice sponsored by Congressman McHenry entitled ''Liquidity Enhancement for Small Public Companies Act'' noting current interest in Congress to provide for ''much needed support for small businesses.'' *See id.* at 2–3.

[106] *See id.* at 4–13. *See also supra* note 102.

comments opposing the proposed MQP, which responses are summarized below.

1. Generally Support MQP

The commenters supporting the NASDAQ Proposal generally express the view that the MQP would provide greater liquidity and create better quality markets for the securities participating in the MQP, including lower transaction costs, increased price discovery and lower volatility.[107] One commenter believes that the NASDAQ Proposal will benefit all market participants, including issuers, investors (institutional and retail), liquidity providers, and the overall U.S. economy.[108] Another commenter believes that the MQP will make a substantial contribution to improving the quality of ETF trading markets and facilitate trading in improved ETFs as new products are introduced.[109]

A number of commenters supportive of the MQP point to academic studies finding that paid for market making arrangements applied to common stocks generally improve market quality and benefit social welfare.[110] One commenter discusses his own study of paid for market making arrangements for common stocks and concludes that market makers entering into these types of agreements provide liquidity buffers against supply and demand shocks.[111] Another commenter cites his own study for the finding that a paid for market making arrangement applicable to common stocks on average improves the liquidity level, reduces liquidity risk, and reduces the size of pricing errors in such stocks, among other things.[112] One commenter cites a study for the proposition that maintaining a level of liquidity provision that is higher than the level that would endogenously arise can increase welfare and enhance efficiency for certain securities.[113]

A number of commenters supportive of the MQP also state that direct payments from issuers to market makers are used in a number of markets outside of the U.S., and such programs have been successful.[114] One commenter states that the combined evidence from other markets indicates that a paid market making program offers significant promise for improving the liquidity of the stocks of smaller firms.[115]

Several commenters supporting the MQP believe that the MQP may incentivize not only the MQP Market Makers, but also other market participants, to make markets in the MQP Securities, thereby creating additional liquidity in the MQP Securities.[116] One commenter cites an article finding that narrower spreads arising from designated market makers with an affirmative obligation to set spreads narrower than would exist otherwise will induce both uninformed and informed traders to trade more, which in turn leads to increased price efficiency and faster price discovery.[117] Another commenter states that a study he conducted potentially indicates that other limit order traders compete more aggressively in the presence of issuer-paid market makers, thereby narrowing spreads beyond the levels mandated by contract.[118]

One commenter believes that the MQP could create value for an issuer through liquidity insurance by, ex ante, shareholders agreeing to pay for a minimum liquidity guarantee to insure against uncertain future liquidity.[119] This commenter states that if future liquidity is less uncertain, more investors should participate in the market, and thus, the MQP could be a way to jump-start trading in a particular product at launch, and if there is intrinsic interest in the product, it should have a better chance of being successful.[120] Similarly, another commenter argues that the MQP is an attractive and low cost way to assure reasonably continuous market making, so that investors that buy ETF shares will not have to be concerned that it may not be possible for them to sell their shares at a price close to the net asset value when they decide to sell.[121]

One commenter states that the incentives that previously existed on NASDAQ for market makers and brokers to nurture smaller companies no longer exist, and that the MQP is a tool to create such incentives.[122] Similarly, one commenter states that the cost to trade many of the smaller and newer ETFs is unpredictable and that incentives to market makers to undertake such costs do not exist under current market rules.[123] This commenter believes that the MQP will provide important incentives to attract market makers to participate in the introduction and continuous trading of newer, less immediately popular, ETFs, and will encourage market makers to be continuous participants in the market by looking for links and arbitrage opportunities between and among the underlying portfolio and the exchange traded product.[124]

Three commenters believe that the MQP will benefit the operating companies underlying ETFs in the MQP, in addition to the ETFs themselves.[125] One of these commenters states that it is not the inclusion in an underlying index that matters to the operating company, but rather the trading volume increase resulting from trading products based on such index.[126] Another commenter agrees with NASDAQ's assertion that membership of an index enlarges ''visibility'' of a company, as substantial trade activity will create investor interest in holding the portfolio and therefore holding the company.[127]

One commenter supports the overall goal of the MQP—to incentivize market

[107] *See* Anonymous Letter at 1, Weaver Letter at 1–2, Anand Letter at 1–2, Knight Letter at 1–2, Angel Letter at 3, TechNet Letter at 1, and MFA Letter at 2.

[108] *See* Knight Letter at 1.

[109] *See* ETF Consultants Letter at 1.

[110] *See* Weaver Letter at 2, Anand Letter at 1, Menkveld Letter at 2, and MFA Letter at 2 citing to the following studies: Weaver, D.G., A. Anand, and C. Tanggaard ''Paying for Market Quality'' *Journal of Financial and Quantitative Analysis,* Vol. 44, 1427–1457, 2009 (''Weaver Study''); Bessembinder, H., J. Hao, and M. Lemmon (2006) ''Why designate market makers? Affirmative obligations and market quality'' *Working paper,* University of Utah (''Bessembinder Study''); Menkveld, A.J. and T. Wang (2011), ''How do designated market makers create value for small-caps?'' *Manuscript,* VU University, Amsterdam (''Menkveld Study''); Skjeltorp, Johannes A. & Bernt Arne Odegaard, ''Why do listed firms pay for market making in their own stock?'' (June 2011); and Hengelbrock, Jordis, ''Designated Sponsors and Bid-Ask Spreads on Xetra,'' University of Bonn—The Bonn Graduate School of Economics (October 2008).

[111] *See* Weaver Letter at 2 citing to the Weaver Study.

[112] *See* Menkveld Letter at 1–2 citing the Menkveld Study.

[113] *See* Anand Letter at 1 citing the Bessembinder Study.

[114] *See* Weaver Letter at 3–4, Knight Letter at 1–2, Anand Letter at 1–2, Angel Letter at 3, and MFA Letter at 2. These commenters cited the Stockholm Stock Exchange, NASDAQ OMX's European exchanges, and Euronext's European exchanges, among others, as markets where such programs have been successful. Another commenter notes that NASDAQ OMX has extensive experience operating exchanges in countries that permit issuers to compensate liquidity providers, so NASDAQ should have the relevant expertise to administer such a program in the U.S. in such a manner as to prevent harm to market participants. *See* Angel Letter at 3.

[115] *See* Anand Letter at 2.

[116] *See* Weaver Letter at 2–3, Knight Letter at 2, Anand Letter at 1–2, and ETF Consultants Letter at 2.

[117] *See* Weaver Letter at 2–3 citing to the Bessembinder Study.

[118] *See* Anand Letter at 1.

[119] *See* Menkveld Letter at 2.

[120] *Id.*

[121] *See* ETF Consultants Letter at 2–3.

[122] *See* Angel Letter at 3.

[123] *See* ETF Consultants Letter at 2.

[124] *See* ETF Consultants Letter at 2.

[125] *See* Weaver Letter at 4, Menkveld Letter at 3–4, and TechNet Letter at 1.

[126] *See* Weaver Letter at 5.

[127] *See* Menkveld Letter at 3–4. Another commenter also suggests that, looking forward, the MQP could benefit promising tech companies that today may lack liquid, quality markets. *See* TechNet Letter at 1.

makers to make high-quality, liquid markets in ETFs—and asserts that, to the extent the MQP results in narrower spreads and more liquid markets for ETFs without any associated unintended consequences for ETFs or the markets as a whole, the MQP could prove beneficial.[128] However, this commenter supports the MQP at this time only through a pilot program as contemplated by the NASDAQ Proposal and the requirement that NASDAQ provide information to the Commission during the pilot about market quality associated with the MQP, to assist in the comparison of ETFs before and after they are in the MQP.[129]

2. Generally Oppose MQP

The commenters opposing the MQP raise various objections to the proposal. Several commenters opposing the NASDAQ Proposal believe that it would result in manipulation and an unfair market place.[130] In its response letter, NASDAQ argues that the MQP will serve to open the market to more participants and ''will be a win for all: For the ETF sponsor or company that lists a liquidity-challenged product with the MQP and experiences added liquidity; for the market maker that receives a modest credit for 'stepping up to the plate' and is willing to take on added risk by enhancing liquidity pursuant to MQP standards; and for the investor that experiences liquidity on both sides of the trading continuum (bid and ask) at lower transaction cost.''[131]

Several commenters opposing the NASDAQ Proposal argue that it would undo the prohibition on issuer payments for market making contained in FINRA Rule 5250, which was put in place for important investor protection reasons.[132]

Two commenters who oppose the MQP believe that it would result in an increase in statistical arbitrage, which these commenters view as speculative short-term trading and as harmful to investors and public companies.[133] NASDAQ responds that the MQP is not designed to inherently increase statistical arbitrage and that arbitrage will exist regardless of the MQP.[134] NASDAQ also notes that arbitrage may serve to help align the pricing of ETFs and allow investors to experience tighter execution related to an ETF's asset value.[135]

One commenter opposed to the MQP argues that the NASDAQ Proposal is not consistent with the Exchange Act because the proposal: (i) Authorizes ETF sponsors to pay market-makers for making markets in a distinct and narrow set of securities, and, thus, does not promote equitable allocation of reasonable dues, fees and other charges; (ii) conjures volume and prices through deliberate, systematic interference with market mechanisms and, thus, does not meet the requirement of promoting just and equitable principles of trade; and (iii) is designed to prompt behavior that would not otherwise occur through payments and, thus, is an impediment to free and open markets.[136] In response, NASDAQ states its belief that it has articulated a sufficient statutory basis to support the proposal, and argues that the goal of the MQP—to incentivize members to make high-quality, liquid markets—supports the development of a resilient and efficient national market system.[137] NASDAQ further argues that the MQP represents an equitable allocation of fees and dues among Market Makers, because Market Makers that choose to undertake increased burdens pursuant to the MQP will be rewarded on a pro rata basis with increased credits, while those that do not undertake such burdens will receive no benefit; any portion of an MQP Fee that is not credited to eligible MQP Market Makers will be refunded to the relevant MQP Company; and all of the benefits of the MQP Fees will flow to high-performing Market Makers rather than to NASDAQ, provided that at least one Market Maker fulfills the obligations under the proposed rule.[138] Finally, NASDAQ argues that the MQP is designed to avoid unfair discrimination among Market Makers and issuers because it contains objective, measurable standards for both issuers and Market Makers that NASDAQ will apply equally to ensure that similarly situated parties are treated similarly.[139]

This commenter further argues that durable markets cannot be constructed on prices contrived through payment for order flow arrangements such as the MQP, and that incentivized trading resulting from such arrangements obfuscates true supply and demand by creating volume where no natural buyers or sellers exist.[140] This commenter believes that it should be incumbent upon ETF sponsors to create vehicles that attract interest.[141]

3. FINRA Rule 5250

As discussed above, three commenters oppose the NASDAQ Proposal because they believe it would violate the prohibition against issuer payments to market makers contained in FINRA Rule 5250.[142] On the other hand, four of the commenters that support the MQP argue that the MQP adequately addresses the concerns that FINRA Rule 5250 was designed to alleviate.[143]

One of these commenters argues that the structure of the MQP and the behavior for which an MQP Market Maker is compensated would discourage inappropriate behavior by MQP Market Makers.[144] In particular, this commenter notes that the market making incentives provided by the MQP should not materially affect the likely price of the MQP Securities, as the mid-point of the price range will be

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[128] *See* NASDAQ ICI Letter at 2.

[129] *See id.* at 2–3.

[130] *See* Choi Letter at 1, O'Connor Letter at 1, Szalay Letter at 1, and Connell Letter at 1.

[131] *See* NASDAQ Response Letter at 14.

[132] *See* Csicsko Letter at 1, Keita Letter at 1, and Connell Letter at 1. FINRA Rule 5250 was implemented, in part, to address concerns about issuers paying market makers to improperly influence the price of an issuer's stock. *See* NASD Rule 2460 Approval Order, *supra* note 67, at 37107 (''Specifically, the Commission finds that the rule preserves the integrity of the marketplace by ensuring that quotations accurately reflect a broker-dealer's interest in buying or selling a security. The decision by a firm to make a market in a given security and the question of price generally are dependent on a number of factors, including, among others, supply and demand, the firm's expectations toward the market, its current inventory position, and exposure to risk and competition. This decision should not be influenced by payments to the member from issuers or promoters. Public investors expect broker-dealers' quotations to be based on the factors described above. If payments to broker-dealers by promoters and issuers were permitted, investors would not be able to ascertain which quotations in the marketplace are based on actual interest and which quotations are supported by issuers or promoters. This structure would harm investor confidence in the overall integrity of the marketplace. The Commission finds that the proposed rule supports a longstanding policy and position of the NASD and establishes a clear standard of fair practice for member firms.'') The Commission's order also discussed conflicts of interest that may exist between issuers and market makers. *See id.* at 37106 (''It has been a longstanding policy and position of the NASD that a broker-dealer is prohibited from receiving compensation or other payments from an issuer for quoting, making a market in an issuer's securities or for covering the member's out-of-pocket expenses for making a market, or for submitting an application to make a market in an issuer's securities. As stated in Notice to Members 75–16 (February 20, 1975), such payments may be viewed as a conflict of interest since they may influence the member's decision as to whether to quote or make a market in a security and, thereafter, the prices that the member would quote.'')

[133] *See* Keita Letter at 1 and IR Letter at 2–3.

[134] *See* NASDAQ Response Letter at 16–17.

[135] *See* NASDAQ Response Letter at 17.

[136] *See* IR Letter at 2.

[137] *See* NASDAQ Response Letter at 16.

[138] *Id.*

[139] *Id.*

[140] *See* IR Letter at 2.

[141] *See id.*

[142] *See supra* note 132.

[143] *See* Anonymous Letter at 1, Weaver Letter at 6, NASDAQ ICI Letter at 2, and ETF Consultants Letter at 6.

[144] *See* ETF Consultants Letter at 6.

determined by market forces and not by a market maker's activity, and MQP Market Makers have an incentive under the MQP to make spreads tight, post reasonable quotes, post them consistently, and post quotes that investors will trade against since they are compensated based on both the quality of quotes and participation in trading.[145] This same commenter also argues that since the securities eligible for the MQP are ETFs, LSs, and TIRs, where net asset value proxies are provided frequently for such products during trading hours, any attempt to artificially push prices up or down would be countered by the availability of this information.[146]

One commenter argues that placing NASDAQ between the funding delivered by the issuer to the market maker will ensure the professional integrity of the MQP and the responsibility of the market maker, and thus alleviates the concerns FINRA Rule 5250 was designed to address.[147]

Another commenter notes that there have been no reports of manipulation attempts by issuers or abuses by market makers in paid for market making programs abroad, and argues that the implementation of paying for market making to improve market quality in other countries probably improved investor confidence, as evidenced by the increase in volume and order size observed by researchers.[148] This commenter also argues that the payment levels proposed in the MQP are not of sufficient size to provide enough incentive for manipulation.[149]

One commenter recognizes that the MQP would represent a departure from the current rules precluding these types of issuer payments, which were put in place to address concerns surrounding the payment of incentives to market makers, and, therefore, supports the establishment of the MQP only through a pilot program as contemplated by the proposal.[150] This commenter also notes that NASDAQ has attempted to address concerns about investor confidence and market integrity that are associated with the MQP through, among other things, disclosure requirements and overall transparency built into the MQP.[151]

The commenter who neither supported nor opposed the proposal also reserves judgment as to whether the MQP sufficiently alleviates the concerns FINRA Rule 5250 was intended to address.[152] This commenter notes that NASDAQ has proposed a number of safeguards around the MQP in an effort to address the concerns underlying the prohibition on issuer payments to market makers, including a transparency requirement wherein NASDAQ would disclose on its Web site the identity of all ETF and market makers participating in the MQP, along with information about amounts paid to or received by these participants; objective and meaningful market quality standards that market makers must meet to receive MQP payments; and opportunity for multiple market makers to compete for payments on each participating ETF. This commenter states that these safeguards are important but believes that it is unclear whether these safeguards would be sufficient to overcome the presumption that issuer payments to market makers have the potential to distort the market and create conflicts of interests that corrupt the integrity of the marketplace.[153]

In its response letter, NASDAQ states its belief that FINRA Rule 5250 was originally adopted to prohibit market makers from getting paid by issuers for increasing volume without supporting liquidity and quality markets, such as ''pump and dump'' schemes.[154] NASDAQ does not believe that the MQP will promote such negative behavior, and emphasizes various aspects of the MQP to support this, including the fact that payments made pursuant to the MQP are administered by the Exchange; an MQP Market Maker can only receive payments under the MQP by meeting the MQP performance standards; the MQP is clear, unambiguous, and transparent; and that the products that are eligible for the MQP, ETFs, have a structure that inherently protects against the opportunity for price manipulation by a market maker because their value is based on the performance of an underlying index or basket of securities.[155]

4. Additional Concerns

One commenter notes a number of additional concerns that the MQP may raise, and suggests that the Commission solicit additional public comment relating to such concerns before approving NASDAQ's Proposal.[156] The areas of concern this commenter identifies include: (i) What effect, if any, the MQP may have on ETFs that are ineligible to participate in the MQP, or that are eligible but choose not to participate; (ii) whether competitive forces will essentially render the MQP compulsory, forcing ETFs into a ''pay-to-play'' environment where new ETFs must pay for the MQP to launch and list and existing ETFs must pay for the MQP to maintain quality markets; (iii) whether NASDAQ's proposed eligibility criteria are consistent with the stated goals of the MQP and the public interest; (iv) whether ETFs for which there is a limited demand should be allowed to be artificially propped up indefinitely by the MQP rather than allowed to fail (or trade at a wider spread); [157] and (v) what implications there are for investors who purchase an ETF when it is in the MQP but seek to sell such ETF after it is no longer participating in the MQP.[158]

In response, NASDAQ states that it does not believe its proposal will cause a diminution of market quality for ETFs that do not participate in the MQP, and anticipates that the liquidity characteristics of ETFs not participating in the MQP will largely remain unchanged (*e.g.,* they will continue to be less than adequate).[159] Furthermore, NASDAQ notes that it has ''taken great strides to make the MQP wholly voluntary,'' and it does not believe the modest market maker credits proposed pursuant to the MQP will result in a ''pay to play'' environment.[160] NASDAQ also disagrees with this commenter's concern regarding whether NASDAQ's proposed eligibility criteria are consistent with the stated goals of the MQP or the public interest. NASDAQ believes that ADV over a three-month period is the proper discontinuance metric for the MQP, as the program is designed for less liquid products, and NASDAQ notes that during the pilot period, the Exchange will evaluate the efficacy of the MQP and may make adjustments to the MQP as needed.[161] NASDAQ does not believe that it would be proper to restrict the MQP to newly

[145] *Id.* at 3.

[146] *Id.* at 6.

[147] *See* Anonymous Letter at 1.

[148] *See* Weaver Letter at 4.

[149] *Id.* at 6.

[150] *See* NASDAQ ICI Letter at 2–3.

[151] *Id.* at 3.

[152] *See* NASDAQ Vanguard Letter at 3–4.

[153] *See id.* at 3. For example, this commenter queries whether it is likely that investors would consult NASDAQ's Web site for information about which ETFs and market makers are participating in the MQP and, if not, whether investors would be able to distinguish quotations that reflect true market forces from quotations that have been influenced by issuer payments. *Id.*

[154] *See* NASDAQ Response Letter at 14–15.

[155] *See* NASDAQ Response Letter at 15.

[156] *See* NASDAQ Vanguard Letter at 4.

[157] On the other hand, another commenter states its belief that the implementation of the MQP would not do much to help a small fund with an unappealing portfolio or a history of poor performance, and that if a fund is not viable, the MQP alone would not save it. *See* ETF Consultants Letter at 5.

[158] *See id.* at 4–6.

[159] *See* NASDAQ Response Letter at 18.

[160] *See id.*

[161] *See* NASDAQ Response Letter at 19.

listed ETFs, as it believes numerous products currently exist that may benefit from liquidity enhancement.[162] NASDAQ also does not believe the public interest would be better served if there was a time limit on an MQP Security's participation in the MQP, arguing that an MQP Security should be terminated from the program only once it has achieved sustained liquidity.[163] NASDAQ further argues that continued participation in the MQP should be at the discretion of the ETF sponsor and should not be limited by the Exchange or the Commission.[164]

A number of commenters supportive of NASDAQ's Proposal identified additional areas of potential concern that the MQP may raise, but went on to dispel such concerns as unwarranted.

For example, one commenter notes the potential risk that insider information at an issuer could reach an MQP Market Maker, but concludes this risk is low because there is no need for communication between an issuer and the market maker after an MQP Security enters the MQP, and because the securities for inclusion in the MQP are less likely to be affected by such insider information risk since they are baskets of securities and security-specific information is less relevant.[165]

Another commenter asserts that an ETF participating in the MQP would generally have a substantial market quality advantage over a comparable product that is not eligible for or does not participate in the MQP; however, this commenter goes on to conclude that this should not be a concern as it is inconceivable that a new ETF would launch without the MQP from the start.[166] This commenter also asserts that the discontinuance of the MQP for an MQP Security could have unintended consequences on fair and orderly markets unless the MQP Market Maker continues to trade the shares without compensation from the MQP; however, this commenter again concludes that this concern is unwarranted as the MQP Fee may be inconsequential at the point of discontinuance if the ETF is successful in gathering assets.[167]

Addressing whether the voluntary nature of the MQP may have negative or unintended effects on the market, one commenter notes that allowing issuers to determine whether to enter into paid for market making arrangements appropriately allows each issuer to weigh the benefits and costs associated with the presence of market makers, and paid for market making contracts will only exist where benefits exceed the costs.[168]

5. MQP Standards

a. Generally Support

Three commenters support the specific provisions and structure of the MQP, stating their view that the standards set forth in proposed NASDAQ Rule 5950 are sufficiently clear and well-designed.[169] One commenter supports the proposed MQP Market Maker compensation framework for creating the right incentives, noting that because MQP Market Makers receive payments only when they maintain a quality market through quoting and when they provide actual liquidity to buyers and sellers through trading, the rule structure assures that there will be a two-sided market when an investor seeks to buy shares in an MQP Security and a similar two-sided market when an investor returns to the market to sell such shares.[170] Similarly, another commenter applauds NASDAQ for basing payments not only on quote activity, but also on actual trade activity resulting from those quotes.[171] One commenter supports limiting the scope of the MQP to ETFs, LSs and TIRs as proposed.[172]

b. MQP Supplemental Fee

One commenter voices support for the MQP Supplemental Fee provision of the MQP, noting that permitting MQP issuers to pay the additional Supplemental MQP Fee at their discretion and to determine how to allocate such fee between quotation and trading performance is appropriate, as the standards set forth in the MQP may not necessarily be right for every product.[173]

c. Trading Volume Threshold

Four commenters discussed the proposed termination of the MQP for any MQP Security that sustains ATV of 2,000,000 shares or more for three consecutive months.[174] One commenter believes that 2,000,000 ATV is an arbitrary threshold that is no better or worse than any other large number, and that the number may need to be adjusted after the MQP has been implemented.[175] Similarly, another commenter notes that the determination of the correct threshold for discontinuance of the MQP is an area that will require additional study, and it is not clear that a hard threshold will be the most efficient means of determining whether a security remains in the MQP.[176] Another commenter argues that any specific level of trading volume or assets under management or any other arbitrary rule as a basis for discontinuing the MQP is inappropriate.[177]

Finally, one commenter notes that, although NASDAQ positions the MQP as intended to help the most illiquid ETFs, the proposed 2,000,000 ATV threshold would permit over 90% of the ETFs in existence as of March 31, 2012 to enter the MQP.[178] This commenter suggests that the Commission consider whether a lower trading volume threshold would be more consistent with the stated goals of the MQP as well as the public interest, or alternatively, whether MQP eligibility should be based on a metric other than trading volume, such as actual quotation and/or transaction data, or should be restricted to newly created ETFs, or whether a security's participation in the MQP should be limited to a defined period of time, such as one or two years.[179] As discussed above, NASDAQ states in its response letter its belief that the proposed 2,000,000 ATV threshold is appropriate at this time, as the MQP is designed for less liquid products, and it believes the program should be terminated with respect to a particular product once it has achieved sustained liquidity.[180] Nasdaq also states in its response letter that it does not believe the MQP should be restricted to newly issued ETFs or that a security's participation in the MQP should be time-limited, as it believes that not only newly listed products, but also many products currently existing may benefit from the program, and that continued

[162] *See id.*

[163] *See id.*

[164] *See id.*

[165] *See* Menkveld Letter at 3.

[166] *See* ETF Consultants Letter at 7.

[167] *See id.* at 7–8.

[168] *See* Anand Letter at 1. This commenter cites the Weaver Study finding that firms with relatively illiquid stocks enter into contracts with market makers, firms with high levels of liquidity do not contract with market makers, and firms with very low levels of liquidity are also less likely to enter into contracts with market makers. *Id.*

[169] *See* Weaver Letter at 1, Knight Letter at 2, and ETF Consultants Letter at 1–2.

[170] *See* ETF Consultants Letter at 3.

[171] *See* NASDAQ Vanguard Letter at 3, n.7.

[172] *See* MFA Letter at 2. This commenter states that it would have reservations were the MQP to apply to single-name securities, as the commenter believes that payment by corporate issuers for market-making could change the market dynamics. *See id.*

[173] *See* ETF Consultants Letter at 7.

[174] *See generally* Weaver Letter, Knight Letter, NASDAQ Vanguard Letter, and ETF Consultants Letter.

[175] *See* Weaver Letter at 8.

[176] *See* Knight Letter at 2.

[177] *See* ETF Consultants Letter at 7.

[178] *See* NASDAQ Vanguard Letter at 5.

[179] *See id.*

[180] *See* NASDAQ Response Letter at 19. *See also supra* note 161 and accompanying text.

participation in the program should be at the discretion of the MQP Company and should not be time-limited.[181]

d. Suggested Additional Disclosure

One commenter suggests that participation in the MQP should be noted on the MQP Security's Web site and in regulatory disclosure documents.[182]

Another commenter suggests that a ticker symbol identifier would be useful for products in the MQP, as products in the MQP will generally have lower volatility.[183] NASDAQ believes that ''changing the ticker symbol of a product in the MQP is neither necessary nor desirable,'' noting the transparency of the MQP and the Web site disclosure of the products accepted into the MQP, as well as the market makers in such product.[184]

6. Fee Payment Clarification

One commenter believes that it is unclear in the Notice and proposed rule text whether the MQP Fees will be paid by ETF sponsors or the ETFs themselves.[185] This commenter argues that if the ETF rather than the ETF sponsor is paying the MQP Fee, this would change the entire financial dynamic of the MQP because it would require existing ETF investors to pay for enhanced liquidity.[186] In response, NASDAQ states that the ETF sponsors will be paying for the MQP.[187]

Two other commenters argue that it is irrelevant whether the ETF sponsor or the ETF itself pays the MQP Fees, because if the sponsor is paying the fee, it will factor the cost into the fee structure of the ETF, and if the ETF is paying the fee, the sponsor will likely absorb the fee either by capping the expense ratio of the ETF or paying the fee itself.[188]

7. Pilot Program

Eight commenters support implementing the MQP on a pilot basis as proposed, and believe that the pilot will provide useful information to gauge the effectiveness of the MQP.[189] Three commenters support the proposed one-year time period for the pilot.[190]

Two commenters suggest improvements to the implementation of the pilot to allow the Commission and NASDAQ to more effectively assess the impact of the MQP.[191] One of these commenters suggests that the pilot have a staggered introduction of MQP Securities with a randomized sequence, and a long enough pre-and post-event period (*e.g.,* three months) for each introduction to identify an effect.[192] In addition, this commenter suggests that NASDAQ provide the Commission with detailed reporting of all trades and quotes in all securities for a pre-event period and a post-event period (with MQP Market Maker trades and quotes flagged).[193] NASDAQ disagrees with this commenter's suggestions for the pilot program, asserting that a staggered introduction of MQP Securities and a randomized sequence would add ''un-needed complexity to the program, and is not necessary in light of the optional nature of the MQP'' and that any pre-event period would be ''antithetical to the goal of the program to enhance liquidity of products as soon as possible.'' [194] Another commenter notes that any ''before and after'' data needed can be obtained by comparing trading and asset growth in existing products which move into the MQP after it is launched, and a period after an ETF launch without participation in MQP would be an unnecessary and inappropriate handicap for new ETFs.[195] NASDAQ agrees with this commenter.[196]

Another commenter believes NASDAQ should be required to monitor market quality metrics during the pilot not only for ETFs participating in the MQP, but also for ETFs that do not participate in the MQP, to determine whether the non-participating ETFs are negatively affected.[197]

One commenter suggests that NASDAQ be required to make available the data gathered under the pilot program to ETF sponsors participating in the MQP.[198] NASDAQ states that it intends to give sponsors access to trading data associated with liquidity provision in their products such as, for example, the performance of market makers for such products.[199]

Another commenter suggests that NASDAQ disclose publicly on a monthly basis each MQP Market Maker's share of Quote Share Payments and Trade Share Payments for each MQP Security the market maker trades.[200]

8. Timing

Two commenters state that the proposal raises significant issues and suggest that the Commission provide additional time for the submission of comments,[201] and one of these commenters specifically suggests additional areas in which the Commission should seek comment.[202] These two commenters also note that the NYSE Arca Proposal raises similar issues to the MQP, and suggest that the Commission consider the two proposals together.[203]

B. Comments to NYSE Arca's Proposal

The Commission received three commenter letters on the NYSE Arca Proposal.[204] One commenter generally supports the goals of the Fixed Incentive Program, but questions whether the program will actually benefit investors.[205] Another commenter opposes the Fixed Incentive Program.[206] Both of these commenters believe that NYSE Arca's Proposal raises additional issues that were not raised in NASDAQ's proposal.[207] Another commenter supports NYSE Arca's proposal, but believes that the party that would be paying the Optional Incentive Fee (whether it be the ETP sponsor or shareholder) should be disclosed in the ETP's offering documents.[208]

1. Generally Support Fixed Incentive Program

Two commenters generally support the overall goal of the Fixed Incentive Program, and state their views that, to the extent the Fixed Incentive Program results in narrower spreads and more liquid markets for ETPs, without any associated unintended consequences for ETPs or the markets as a whole, the Fixed Incentive Program could prove

[181] *See* NASDAQ Response Letter at 19. *See also supra* notes 162–164 and accompanying text.

[182] *See* ETF Consultants Letter at 8.

[183] *See* Weaver Letter at 9.

[184] *See* NASDAQ Response Letter at 7–8.

[185] *See* NASDAQ Vanguard Letter at 6.

[186] *Id.*

[187] *See* NASDAQ Response Letter at 11 and 20.

[188] *See* Weaver Letter at 7 and ETF Consultants Letter at 3–4.

[189] *See generally* Weaver Letter, Menkveld Letter, Anand Letter, NASDAQ ICI Letter, Knight Letter, NASDAQ Vanguard Letter, ETF Consultants Letter, and MFA Letter.

[190] *See* Weaver Letter at 8, Menkveld Letter at 4, and ETF Consultants Letter at 8.

[191] *See* Menkveld Letter at 4–5 and NASDAQ Vanguard Letter at 4–5.

[192] *See* Menkveld Letter at 4.

[193] *Id.* at 4–5.

[194] *See* NASDAQ Response Letter at 9.

[195] *See* ETF Consultants Letter at 8.

[196] *See* NASDAQ Response Letter at 12.

[197] *See* NASDAQ Vanguard Letter at 4.

[198] *See* NASDAQ ICI Letter at 3.

[199] *See* NASDAQ Response Letter at 11.

[200] *See* ETF Consultants Letter at 8.

[201] *See* NASDAQ ICI Letter at 1 and NASDAQ Vanguard Letter at 1–2.

[202] *See* NASDAQ Vanguard Letter at 4–6; *see also supra* notes 156–158 and accompanying text.

[203] *See* NASDAQ ICI Letter at 1, n.3 and NASDAQ Vanguard Letter at 5–6. *See also infra* note 247.

[204] *See supra* notes 13 and 16.

[205] *See* NYSE Arca ICI Letter at 2.

[206] *See* NYSE Arca Vanguard Letter at 2.

[207] *See* NYSE Arca ICI Letter at 2 and NYSE Arca Vanguard Letter at 2.

[208] *See* USCF Letter at 3.

beneficial.[209] One commenter states that the number and quality of firms that are both able and willing to serve as an LMM has declined dramatically.[210] This commenter asserts that the current lack of LMMs willing to support new listings raises the concern that ETP issuers that also have extensive trading and money management efforts in non-ETP markets (such as in the open-end mutual fund or institutional fund management markets) may use such non-ETP trading revenue to attract market makers and LMMs to make markets in their ETP listings, to the disadvantage of ETPs without such outside trading revenue.[211] This commenter believes that the Fixed Incentive Program would help to alleviate the concerns it has about the decline in the current robustness of the LMM universe.[212] Another commenter states that, while it supports the goals of market maker incentive programs such as the Fixed Income Program, it is unclear, at this time, whether such programs will result in overall benefits to investors.[213]

2. Opposes Fixed Incentive Program

Another commenter opposes NYSE Arca's Proposal and argues that the Commission should not approve the Fixed Incentive Program until NYSE Arca articulates and provides support for the purported benefits to the markets and long-term investors that the program will provide.[214] This commenter argues that issuer payments to market makers are prohibited, and exceptions to that prohibition should be made only if the rationale is compelling and the exception is narrowly tailored to accomplish an important public policy goal, such as providing demonstrable benefits to long-term investors.[215] This commenter states that NYSE Arca has focused on the needs of market makers and has provided little evidence demonstrating how the Fixed Incentive Program will benefit investors.[216] Furthermore, this commenter argues that, even if incentivizng market makers to serve as LMMs (as opposed to benefiting investors) were a sufficient objective, NYSE Arca's Proposal is not narrowly tailored to achieve that objective, as, according to the data provided by NYSE Arca in support of its proposal, more than 90% of ETPs manage to attract and retain LMMs under the existing compensation arrangements.[217]

3. Concerns Raised by NYSE Arca Proposal

One commenter notes that NYSE's Arca's Proposal, like all market maker incentive programs, represents a departure from current rules precluding market makers from accepting payment from an issuer for acting as a market maker and raises conflict of interest concerns.[218] In addition, this commenter asserts that some of the elements of NYSE Arca's Proposal could raise potential conflicts of interest between an LMM and an ETP issuer; specifically, certain elements of the NYSE Arca Proposal could provide incentives for LMMs to pressure ETP issuers to place every NYSE Arca-listed ETP in the Fixed Program or face the threat of the withdrawal of the LMM from making a market in that issuer's ETPs.[219]

Another commenter states that NYSE Arca's Proposal raises many of the same concerns as NASDAQ's Proposal, including: (i) Whether issuer payments to market makers could have the potential to distort market forces; (ii) failure to place a time limit on an ETP's participation in the Fixed Incentive Program could raise concerns; (iii) the Fixed Incentive Program could lead to diminished market making activity in ETPs that are ineligible to, or choose not to, participate in the program; and (iv) the NYSE Arca Proposal could create a pay-to-play environment, effectively forcing issuers to pay a fee to maintain quality markets for their eligible ETPs.[220]

In addition, this commenter asserts that NYSE Arca's Proposal raises additional concerns beyond NASDAQ's Proposal because of NYSE Arca's rationale for the Fixed Incentive Program and the structure of the Fixed Incentive Program.[221] For example, this commenter states that NYSE Arca's justification for the Fixed Incentive Program focuses on the needs of LMMs and provides little evidence demonstrating how the Fixed Incentive Program would benefit investors.[222] In addition, to prevent ETP issuers from enrolling in the Fixed Incentive Program an ETP that already has ample trading volume and good market quality, the commenter believes that NYSE Arca should include objective eligibility criteria tied to trading volume and/or market quality, as such criteria would ensure that issuer payments to LMMs would be permitted only in situations where existing compensation arrangements are demonstrably insufficient to incentivize market makers to serve as LMMs.[223] The commenter also asserts that, to benefit investors, the Fixed Incentive Program should impose materially higher minimum performance standards on LMMs.[224] Finally, the commenter asserts that, in contrast to the NASDAQ Proposal, investors purchasing and selling shares of ETPs participating in the Fixed Incentive Program will not benefit unless (a) the ETP issuer, independent of the Fixed Incentive Program, requires the LMM to meet enhanced performance standards, or (b) the LMM maintains a higher quality market than would exist in the absence of the Fixed Incentive Program; the commenter argues that NYSE Arca has not demonstrated that either of the above outcomes will consistently occur.[225]

a. Lack of Higher Performance Standards

Two commenters voice concerns that LMMs in the Fixed Incentive Program do not have higher performance standards than LMMs not participating in the Fixed Incentive Program, and suggest that NYSE Arca impose higher performance standards on LMMs participating in the Fixed Incentive Program.[226] One commenter argues that requiring heightened performance standards to receive the Optional Incentive Fee would address conflict of interest concerns, may provide a greater incentive for LMMs to make better markets in ETPs, and would make the overall standards of the Fixed Incentive Program more transparent to issuers and investors.[227]

b. Lack of Competition Among Market Makers

Two commenters believe it is significant that, under the NYSE Arca Proposal, only one LMM would be assigned to an ETP participating in the Fixed Incentive Program, while under the NASDAQ Proposal, multiple market makers would compete to receive fees

[209] *See* NYSE Arca ICI Letter at 2 and USCF Letter at 1–2.

[210] *See* USCF Letter at 2.

[211] *See id.*

[212] *See id.*

[213] *See* NYSE Arca ICI Letter at 2, n.6.

[214] *See* NYSE Arca Vanguard Letter at 2.

[215] *See id.*

[216] *See id.*

[217] *See id.*

[218] *See* NYSE Arca ICI Letter at 2.

[219] *See id.* at 3–4. The commenter notes, however, that limiting the number of ETPs from a single issuer in the Fixed Incentive Program would prevent incentives for LMMs to pressure ETP issuers to place each and every ETP listed on NYSE Arca into the Fixed Incentive Program. *See id.* at 4.

[220] *See* NYSE Arca Vanguard Letter at 2, n.7.

[221] *See id.* at 2.

[222] *See id.*

[223] *See id.* at 3.

[224] *See id.*

[225] *See id.*

[226] *See* NYSE Arca ICI Letter at 3 and NYSE Arca Vanguard Letter at 3.

[227] *See* NYSE Arca ICI Letter at 3.

from the MQP.[228] One commenter argues that the Fixed Incentive Program is not competitive because all the money contributed by a participating ETP issuer goes to its designated LMM so long as that LMM meets the existing minimum standards.[229]

c. Additional Eligibility Criteria

Two commenters are concerned that, unlike NASDAQ's Proposal, there are no liquidity or trading volume requirements on ETPs that may participate in the Fixed Incentive Program.[230] One commenter notes that, as proposed, nothing prevents an ETP issuer from enrolling in the Fixed Incentive Program an ETP that already has ample trading volume and therefore robust market maker activity and good market quality.[231] To address these concerns, these two commenters recommend that NYSE Arca limit the type of ETPs permitted into the Fixed Incentive Program based on trading volume.[232] One commenter argues that if an ETP without an LMM has sufficient market maker activity to generate a consistent, fair, and orderly market, then there is no compelling rationale for the issuer to pay for an LMM, and such payments should not be permitted.[233]

4. Fixed Incentive Program Standards

One commenter voices support for certain provisions of NYSE Arca's Proposal, such as the ability for issuers to choose the LMMs for their ETPs in the Fixed Incentive Program and the ability of issuers to negotiate the Optional Incentive Fee with their assigned LMM.[234] This commenter asserts that, given that the NYSE Arca market structure does not allow for competing market makers, the choice of a specific LMM for an issuer may be more significant than that on other markets where multiple market makers exist.[235]

Two commenters support the proposed limit on the number of ETPs that an issuer may have in the Fixed Incentive Program.[236] One of these commenters believes that limiting the number of ETPs from a single issuer in the Fixed Incentive Program will prevent any incentive for LMMs to pressure ETP issuers to place every ETP listed on NYSE Arca in the Fixed Incentive Program.[237]

5. Fee Payment Clarification

Three commenters raised the issue of which party or entity would be paying the Optional Incentive Fee.[238] Two commenters believe that it is unclear from NYSE Arca's Proposal whether the entity paying the Optional Incentive Fee is the ETP sponsor or the fund itself and request that NYSE Arca clarify this element of the proposal.[239] One of these commenters asserts that if the fund itself pays the fee, the amount of the fee will be incorporated in the fund's expense ratio and will be borne by the fund's shareholders, raising their cost of ownership, and it is unlikely that the amount the Fixed Incentive Program might save investors in the form of narrower spreads would offset the increase in expense ratio.[240] This commenter further argues that the bulk of any savings that would result from the narrowing of spreads would accrue to frequent traders, while long-term buy-and-hold investors would see little or no savings in spread costs to offset the increased expense ratio.[241] Another commenter does not believe that the NYSE Arca Proposal needs to specify who would be paying the Optional Incentive Fee, but believes the Program should be amended to require clear disclosure in the ETP's offering documents of who would be responsible for the fee payment, whether it be the ETP sponsor or the ETP shareholders.[242]

6. Pilot Program

Two commenters support the pilot program aspect of the Fixed Incentive Program.[243] One commenter believes it is important that NYSE Arca and the Commission have an opportunity to evaluate the impact of the program on the quality of markets in ETPs prior to considering its permanent approval, both with respect to ETPs participating in the program and those ETPs that choose not to participate.[244] In addition, this commenter believes that statistics on the performance of LMMs during the pilot should be publicly disclosed, as such information could provide meaningful information to investors and would facilitate assessing how much liquidity is being provided by LMMs in the Fixed Incentive Program.[245] Another commenter suggests that the Commission consider under what circumstances the Fixed Incentive Program should move forward from being a pilot program to a permanent one, recommending that there be a review process to ensure that the pilot program did not produce unintended consequences.[246]

7. Consideration of the SRO Proposals Together

Two commenters recommend that the Commission consider the SRO Proposals together as they raise many of the same issues, and generally raise the question of whether to permit ETP issuers to pay for market making services.[247]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2012–043 and SR–NYSEArca–2012–37 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the SRO Proposals should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the significant legal and policy issues raised by the SRO Proposals that are discussed below. The institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the SRO Proposals.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(4) of the Act[248] requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and

[228] *See* NYSE Arca ICI Letter at 2, n.5 and NYSE Arca Vanguard Letter at 3.

[229] *See* NYSE Arca Vanguard Letter at 3.

[230] *See* NYSE Arca ICI Letter at 3 and NYSE Arca Vanguard Letter at 3.

[231] *See* NYSE Arca Vanguard Letter at 3. On the other hand, one commenter believes that the design of the NYSE Arca Proposal tends to provide a disincentive for an LMM to take part in the program when dealing with ETPs that are already actively trading and eliminates the concern that LMMs will be paid more for doing little to nothing extra. *See* USCF Letter at 3.

[232] *See* NYSE Arca ICI Letter at 3–4 and NYSE Arca Vanguard Letter at 3. One of these commenters states that other market quality criteria would also be acceptable. *See* NYSE Arca Vanguard Letter at 3, n.9.

[233] *See* NYSE Arca Vanguard Letter at 3, n.9.

[234] *See* NYSE Arca ICI Letter at 2.

[235] *See id.* at 3.

[236] *See* NYSE Arca ICI Letter at 2 and USCF Letter at 3.

[237] *See* NYSE Arca ICI Letter at 4.

[238] *See* NYSE Arca ICI Letter at 3, n.8, NYSE Arca Vanguard Letter at 3–4, and USCF Letter at 3.

[239] *See* NYSE Arca ICI Letter at 3, n.8 and NYSE Arca Vanguard Letter at 3–4.

[240] *See* NYSE Arca Vanguard Letter at 4.

[241] *See id.*

[242] *See* USCF Letter at 3.

[243] *See* NYSE Arca ICI Letter at 4 and USCF Letter at 3.

[244] *See* NYSE Arca ICI Letter at 4.

[245] *See id.*

[246] *See* USCF Letter at 3.

[247] *See* NYSE Arca Vanguard Letter at 2 and NYSE Arca ICI Letter at 2, n.6.

[248] 15 U.S.C. 78f(b)(4).

other persons using its facilities, and Section 6(b)(5) of the Act [249] requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Two commenters stressed the need to consider the SRO Proposals together because they raise similar issues relating to payment for market making programs,[250] and urged the Commission to provide additional time for the public to consider the SRO Proposals and to submit comments.[251] In addition, several commenters expressed concerns with payment for market making programs generally and with certain details of the SRO Proposals.[252] Moreover, certain commenters expressed concerns with the structure of the pilot programs for the SRO Proposals, and whether the information to be provided by the Exchanges to the Commission would allow the Commission to meaningfully assess the impact of the Programs.[253] One commenter noted its belief that the NASDAQ Proposal was not consistent with the Exchange Act.[254] On the other hand, several commenters expressed support for the SRO Proposals designed to incentivize market makers to make quality and/or consistent, fair, and orderly markets in certain ETPs.[255]

The SRO Proposals would allow issuers of certain ETPs to pay an additional fee to a national securities exchange, which fee (or a large portion thereof) would in turn be paid to one or more market makers for making markets in such security. As proposed, any payments made by issuers pursuant to the SRO Proposals would appear to violate FINRA Rule 5250.[256] In addition, absent exemptive relief, any payments made by issuers pursuant to the SRO Proposals would violate Rule 102 under Regulation M.[257] Furthermore, the SRO Proposals raise issues under Section 11(d)(1) of the Act [258] and Rule 12b–1 [259] under the Investment Company Act of 1940 (''1940 Act'').

Regulation M. Because pricing integrity is essential during the offering process, the Commission proscribes certain activity in connection with distributions.[260] Specifically, Rule 102 of Regulation M prohibits, in connection with a distribution of securities, issuers, selling security holders, and their affiliated purchasers from directly or indirectly bidding for, purchasing, or attempting to induce others to bid for or purchase covered securities—including the security that is the subject of the distribution—during the applicable restricted period.[261] The purpose of this prohibition is to ''prevent those persons participating in a distribution of securities * * * from artificially conditioning the market for the securities in order to facilitate the distribution'' as well as ''to protect the integrity of the securities trading market as an independent pricing mechanism.'' [262] As the Commission has stated, attempts to induce bids or purchases of covered securities outside of the distribution raise substantial concerns about whether they would fundamentally interfere with the independence of the market dynamics that are essential to the ability of investors to evaluate the terms on which securities are offered.[263]

The Commission believes that issuer payments made under the SRO Proposals would constitute an indirect attempt by the issuer [264] of a covered security to induce a purchase or bid in a covered security during a restricted period in violation of Rule 102.[265] Under the NASDAQ Proposal, the issuer payments would ''be used for the purpose of incentivizing one or more Market Makers in the MQP Security,'' [266] which could induce bids or purchases for the issuer's security during a restricted period. Under the NYSE Arca Proposal, the purpose of the Program is ''to create a Fixed Incentive Program for issuers of certain ETPs listed'' on NYSE Arca,[267] which likewise could induce bids or purchases for the issuer's security during a restricted period.

As a result, participation in the Programs by an MQP Company, in the case of the NASDAQ Proposal, or issuer that is an ETP, in the case of the NYSE Arca Proposal, would violate Rule 102, absent exemptive relief.[268] While the Commission or staff has granted relief from Rule 102 to a number of ETPs,[269]

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[249] 15 U.S.C. 78f(b)(5).

[250] *See supra* notes 203 and 247 and accompanying text.

[251] *See supra* notes 201–202 and accompanying text.

[252] *See supra* notes 130–141, 156–168, and 214–233 and accompanying text.

[253] *See supra* notes 191–197 and accompanying text.

[254] *See supra* note 136.

[255] *See supra* notes 107–129, 169–172, 209–213, and 235–237 and accompanying text.

[256] *See* NASDAQ Notice, *supra* note 4, at 22043 (stating NASDAQ's belief that FINRA intends to file an immediately effective rule change exempting exchange programs approved by the Commission from FINRA Rule 5250) and NYSE Arca Notice, *supra* note 12, at 29420–21 (stating NYSE Arca's belief that FINRA would be filing an immediately effective rule change indicating that participation by LMMs and issuers in the Fixed Incentive Program would not be prohibited by FINRA Rule 5250).

FINRA Rule 5250 states, in relevant part, that ''[n]o member or person associated with a member shall accept any payment or other consideration, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as a market maker in a security, or submitting an application in connection therewith.'' FINRA Rule 5250 was implemented, in part, to address concerns about issuers paying market makers to improperly influence the price of an issuer's stock. *See* NASD Rule 2460 Approval Order, *supra* note 67, at 37107 (noting that the rule preserves the integrity of the marketplace by ensuring that quotations accurately reflect a broker-dealer's interest in buying or selling a security and that the decision by a firm to make a market in a given security and the question of price should not be influenced by payments to the member from issuers or promoters; if payments to broker-dealers by promoters and issuers were permitted, investors would not be able to ascertain which quotations in the marketplace are based on actual interest and which quotations are supported by issuers or promoters).

[257] 17 CFR 242.102.

[258] 15 U.S.C. 78k(d)(1).

[259] 17 CFT 270.12b–1.

[260] *See* Securities Exchange Act Release No. 50831 (Dec. 9, 2004), 69 FR 75774 (Dec. 17, 2004).

[261] 17 CFR 242.102.

[262] *See* Securities Exchange Act Release No. 33924 (Apr. 19, 1994), 59 FR 21681 (Apr. 26, 1994).

[263] *See Commission Guidance Regarding Prohibited Conduct in Connection with IPO Allocations,* Securities Exchange Act Release No. 51500 (April 7, 2005), 70 FR 19672, 19673 (April 13, 2005).

[264] Payments to the participating market makers under the NYSE Arca Proposal would be made by the issuer (via NYSE Arca), but under the NASDAQ Proposal, they would be made by the MQP Company (via NASDAQ). ''MQP Company'' is defined as the ''fund sponsor or other entity that lists one or more MQP Securities on NASDAQ.'' *See* proposed NASDAQ Rule 5950(e)(7). For exchange traded notes and trust issued receipts, the sponsor and issuer are the same entity. For exchange traded funds, the payments are for the benefit of the issuer (the fund). The Commission would view all of these payments as constituting an indirect attempt by the issuer to induce a purchase or bid.

[265] As the securities participating in the SRO Proposals are ETPs that are in continuous distribution, these securities are always in a restricted period under Rule 102.

[266] Preamble to proposed NASDAQ Rule 5950. *See also* NASDAQ Notice, *supra* note 4, at 22043.

[267] *See* NYSE Arca Notice, *supra* note 12, at 29419.

[268] The exception in Rule 102 for the redeemable securities of open-end investment companies is not available for ETFs such as those participating in the Programs. *See* 17 CFR 242.102(d)(4). This is because while ETFs operate under exemptions from the definitions of ''open-end company'' under Section 5(a)(1) of the 1940 Act and ''redeemable security'' under Section 2(a)(32) of the 1940 Act, neither they nor the securities that they issue meet those definitions.

[269] *See, e.g.,* Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (Oct. 24, 2006) (regarding class relief for exchange traded index funds).

this relief is designed to permit the ordinary operations (*i.e.,* redemptions of ETP securities) of the ETP. Participation in the SRO Programs is not necessary for the operation of the ETP in the same way that redemptions are necessary. Moreover, commenters raised concerns that the proposed issuers' payments to market makers have the potential to distort market forces, impact pricing integrity, and prevent investors from distinguishing quotations that reflect true market forces from quotations that have been influenced by issuer payments, and that the proposed safeguards of the Programs may not be sufficient to overcome such distortions.[270] Regulation M, among other things, is intended to assure that distributions of securities are free of the market effects of bids, purchases, and inducements to purchase by those who have an interest in the success of a distribution. Thus, the Commission would need to consider whether it would be appropriate to grant exemptive relief in these circumstances, including whether there would be any alternative means to address these concerns, which could be established through conditions to any exemptive relief.

Rule 12b–1. The Commission notes that MQP Securities (in the case of the NASDAQ Proposal) and ETPs (in the case of the NYSE Arca Proposal) that operate as ETFs registered under the 1940 Act are prohibited from paying for distribution of their shares, unless such payments are made pursuant to a plan that meets the requirements of Rule 12b–1 under the 1940 Act. An ETF's board of directors should therefore initially (and periodically thereafter) evaluate the purpose and effect of MQP Fees/Optional Incentive Fees (as applicable) proposed to be made by an ETF to determine that such payments would be in compliance with that provision. In addition, the ETF's board should consider initially (and periodically thereafter) whether such fees to be paid by an ETF's investment adviser or other affiliate would be an indirect use of fund assets for distribution in assessing the appropriateness of advisory or other fees paid by the ETF to such persons.[271]

In the NASDAQ Response Letter, NASDAQ noted its belief that Rule 12b–1 is not implicated by payments made pursuant to the MQP because the MQP payments are being made by ETF sponsors, rather than the ETFs themselves.[272] The Commission notes that the prohibition in Rule 12b–1 applies to both direct and indirect payments made by ETFs registered under the 1940 Act.

Section 11(d)(1). Section 11(d)(1) of the Exchange Act [273] generally prohibits a broker-dealer from extending or maintaining credit, or arranging for the extension or maintenance of credit, on shares of new issue securities, if the broker-dealer participated in the distribution of the new issue securities within the preceding 30 days. The Commission's view is that shares of open-end investment companies and unit investment trusts registered under the 1940 Act, such as ETF shares, are distributed in a continuous manner, and broker-dealers that sell such securities are therefore participating in the "distribution" of a new issue for purposes of Section 11(d)(1).[274]

The Commission, acting under delegated authority, granted an exemption from Section 11(d)(1) and Rule 11d1–2 thereunder for broker-dealers that have entered into an agreement with an ETF's distributor to place orders with the distributor to purchase or redeem the ETF's shares ("Broker-Dealer APs).[275] The SIA Exemption allows a Broker-Dealer AP to extend or maintain credit, or arrange for the extension or maintenance of credit, to or for customers on the shares of qualifying ETFs subject to the condition that neither the Broker-Dealer AP, nor any natural person associated with the Broker-Dealer AP, directly or indirectly (including through any affiliate of such Broker-Dealer AP), receives from the fund complex any payment, compensation or other economic incentive to promote or sell the shares of the ETF to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B), or (C). This condition is intended to eliminate special incentives that Broker-Dealer APs and their associated persons might otherwise have to "push" ETF shares.

The SRO Proposals would permit certain issuers, including ETFs, to voluntarily pay increased listing fees to the Exchanges. In turn, the Exchanges would use the fees to pay market makers incentives to improve the liquidity of participating issuers' securities, and thus enhance the market quality for the participating issuers. Incentives would be accrued for, among other things, executing purchases and sales on the Exchanges. Receipt of the incentive payments by certain broker-dealers would implicate the condition of the SIA Exemption from the new issue lending restriction in Section 11(d)(1) of the Exchange Act discussed above.

The Commission's view is that the incentives market makers would receive under the SRO Proposals are indirect payments from the fund complex to the market maker and that those payments are compensation to promote or sell the shares of the ETF. If the SRO Proposals were approved, a market maker that also is a Broker-Dealer AP for an ETF (or an associated person or an affiliate of a Broker-Dealer AP) that receives the incentives would not be able to rely on the SIA Exemption from Section 11(d)(1). This does not mean that Broker-Dealer APs could not participate in the SRO Proposals, if they were approved; it merely means they could not rely on the SIA Exemption while doing so. Thus, Broker-Dealer APs that participate in the SRO Proposals would need to comply with Section 11(d)(1) unless there is another applicable exemption.

In light of the comments received and the importance of the policy issues raised by the SRO Proposals, the Commission is seeking further comment on various aspects of the Programs to help the Commission evaluate whether the SRO Proposals are consistent with the requirements of Sections 6(b)(4) and 6(b)(5) of the Act, including whether the proposed Programs provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers, and whether the Programs are designed to prevent fraudulent and manipulative acts and practices, would protect investors and the public interest, and not be designed to permit unfair discrimination between issuers, brokers or dealers.

Based on comments received on the SRO Proposals, and in light of the fact that the proposed Programs raise similar issues, the Commission is issuing this

[270] *See* IR Letter at 2 ("Incentivized trading obfuscates true supply and demand by creating volume where no natural buyers or sellers exist") and NASDAQ Vanguard Letter at 3 (noting that "it is not clear whether [the proposed] safeguards will be sufficient to overcome the presumption" that issuer payments to market makers have the potential to distort the market and create conflicts of interest that corrupt the integrity of the marketplace). *See also* Choi Letter at 1 (stating that the MQP program "will make the markets even more distorted and tilted to those who create an unfair marketplace").

[271] *See Payment of Asset-Based Sales Loads by Registered Open-End Management Investment Companies,* Investment Company Act Release No. 16431 (June 13, 1988) at n.123 and accompanying text.

[272] *See* NASDAQ Response Letter at 20.

[273] 15 U.S.C. 78k(d)(1).

[274] *See* Exchange Act Release Nos. 6726 (Feb. 8, 1962), 27 FR 1415 (Feb. 15, 1962) and 21577 (Dec. 18, 1984), 49 FR 50174 (Dec. 27, 1984).

[275] *See* Letter from Catherine McGuire, Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission to Securities Industry Association (November 21, 2005) ("SIA Exemption").

joint order to institute proceedings on both of the SRO Proposals. The Commission believes that instituting proceedings on both filings jointly through this order will facilitate the Commission's ability to solicit comment on the issues that are common to both SRO Proposals. Nevertheless, the Commission will assess each SRO Proposal separately for consistency with the requirements of the Exchange Act and the rules and regulations thereunder.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any others they may have identified with the SRO Proposals. In particular, the Commission invites the written views of interested persons concerning whether the SRO Proposals are consistent with Sections 6(b)(4), 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[276]

Interested persons are invited to submit written data, views and arguments regarding whether the SRO Proposals should be approved or disapproved by August 16, 2012. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 31, 2012.

The Commission is asking that commenters address the merit of the statements of each Exchange in support of its respective proposed Program and the statements of commenters in response to the SRO Proposals, in addition to any other comments they may wish to submit about the SRO Proposals. Specifically, the Commission requests comment on the following aspects of the SRO Proposals:

1. FINRA Rule 5250 (formerly NASD Rule 2460) is designed to preserve ''the integrity of the marketplace by ensuring that quotations accurately reflect a broker-dealer's interest in buying or selling a security.'' [277] Specifically, in the NASD Rule 2460 Approval Order, the Commission found that the ''decision by a firm to make a market in a given security and the question of price generally are dependent on a number of factors, including, among others, supply and demand, the firm's expectations toward the market, its current inventory position, and exposure to risk and competition. This decision should not be influenced by payments to the member from issuers or promoters. Public investors expect broker-dealers' quotations to be based on the factors described above. If payments to broker-dealers by promoters and issuers were permitted, investors would not be able to ascertain which quotations in the marketplace are based on actual interest and which quotations are supported by issuers or promoters. This structure would harm investor confidence in the overall integrity of the marketplace.'' [278] The Commission also added that ''such payments may be viewed as a conflict of interest since they may influence the member's decision as to whether to quote or make a market in a security and, thereafter, the prices that the member would quote.'' [279]

Several commenters have raised concerns that issuer payments such as those proposed in the Programs could have the potential to distort the market and create conflicts of interest that could corrupt the integrity of the marketplace in violation of FINRA Rule 5250 and are not consistent with the Exchange Act.[280] Other commenters, and NASDAQ, believe that the NASDAQ Proposal addresses the concerns that FINRA Rule 5250 was designed to address.[281]

Given the rationale behind FINRA Rule 5250, what are commenters' views on whether each Program addresses (or does not address) the concerns that FINRA Rule 5250 was designed to mitigate, and why or why not? If commenters are of the view that a Program does not address the concerns that FINRA Rule 5250 was designed to mitigate, what specific safeguards, if any, could be imposed to address these concerns? Are there aspects of the Programs or features of the ETPs that would be included in the Programs that would support their exclusion from the general coverage of the Rule? If so, what are they, and why?

2. The studies cited by NASDAQ in the NASDAQ Notice and by commenters supportive of the NASDAQ Proposal examined programs applicable to equity securities of operating companies and not to other classes of securities, such as ETPs. Are there any studies that have observed paid for market making programs specifically relating to ETPs? Are there unique features of ETPs that would make market maker programs in ETPs similar to the Programs fundamentally different than market maker programs in other securities such that results of studies focused on other securities cannot be applied to similar programs for ETPs?

3. The studies cited by NASDAQ in the NASDAQ Notice and by commenters supportive of the NASDAQ Proposal looked at the market quality characteristics of equity securities of operating companies under certain market making programs, but did not provide a comparison to the market quality of those same securities before participating in such programs. Are there any studies that have compared the market qualities of securities before and during their participation in such a program? How important is this distinction? Are there any studies that have compared the market qualities of securities that did not participate in such a program to the market qualities of similar securities that participated in the same program? Are there any studies that have compared the market qualities of securities during and after their participation in such a program?

4. NASDAQ believes that the MQP will be beneficial to the financial markets, to market participants, and to the economy, in general. Specifically, NASDAQ believes that the MQP will, among other things, lower transaction costs and enhance liquidity in both ETPs and their components, making those securities more attractive to a broader range of investors, and in so doing, the MQP will help companies access capital to invest and grow. Do commenters agree with NASDAQ's argument that the MQP will enhance liquidity in both the ETP shares and the component companies comprising the underlying index or portfolio? If so, why? If not, why not? Do commenters agree with NASDAQ's assertion that the MQP will ultimately help ETP component companies to gain enhanced access to capital? If so, why? If not, why not? Please answer with specificity.

5. NASDAQ states that one of the goals of the MQP is to enhance liquidity

[276] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[277] *See* NASD Rule 2460 Approval Order, *supra* note 67, at 37107.

[278] *See id.*

[279] *See id.* at 37106.

[280] *See supra* note 132 and 136 and accompanying text.

[281] *See supra* notes 143–155 and accompanying text.

in both ETFs and their components.[282] NASDAQ further states that there is a ''vital need for the MQP in the U.S. market for products facing liquidity challenges.'' [283] Are there specific examples of ETPs that would be, or whose underlying components would be, considered less liquid (and perhaps examples of ETPs that have failed in the past) that commenters consider would benefit from inclusion in the MQP?

6. NASDAQ states that the MQP is intended to help ''less actively traded'' and ''less well known'' ETFs. As such, NASDAQ proposes to terminate the MQP for an MQP Security that sustains an average ATV of 2,000,000 shares or more for 3 consecutive months. One commenter believes that 2,000,000 ATV is an arbitrary threshold that is no better or worse than any other large number, and that the number may need to be adjusted after the MQP has been implemented.[284] Similarly, another commenter asserts that the determination of the correct threshold for discontinuance of the MQP is an area that will require additional study, and it is not clear that a hard threshold will be the most efficient means of determining whether a security remains in the MQP.[285] Another commenter argues that any specific level of trading volume or assets under management or any other arbitrary rule as a basis for discontinuing the MQP is inappropriate.[286] Finally, one commenter notes that, although NASDAQ states that the MQP is intended to help the most illiquid ETFs, the proposed 2,000,000 ATV threshold would permit over 90% of the ETFs in existence as of March 31, 2012 to enter the MQP.[287] This commenter suggests that the Commission consider whether a lower trading volume threshold would be more consistent with the stated goals of the MQP as well as the public interest, or alternatively, whether MQP eligibility should be based on a metric other than trading volume, such as actual quotation and/or transaction data, or should be restricted to newly created ETFs, or whether a security's participation in the MQP should be limited to a defined period of time, such as one or two years.[288]

With respect to the NASDAQ Proposal, do commenters believe that a lower or higher trading volume threshold would be more consistent with the stated goals of the MQP as well as the public interest? Please explain. Do commenters believe that MQP applicability should be based on a metric other than trading volume, such as actual quotation and/or transaction data or another metric? Why or why not? If so, what metric(s) would commenters suggest and why? In the alternative, should ETPs be ineligible for the MQP only when the trading volume (or another measure of trading) is consistently over some reasonable level for a longer period of time (*e.g.,* 3–6 months) rather than when the ETP crosses the 2,000,000 ATV threshold for 3 consecutive months, as proposed? Why or why not? Should the MQP be restricted to newly listed ETPs? Under a Program that would terminate using a specified threshold for a particular ETP, would ETPs just above the threshold (and thus are ineligible or no longer able to participate in the Program) suffer as a result?

7. Two commenters state that, unlike NASDAQ's Proposal, there are no liquidity or trading volume requirements on ETPs that may participate in the Fixed Incentive Program.[289] One commenter notes that, as proposed, nothing prevents an ETP issuer from enrolling in the Fixed Incentive Program an ETP that already has ample trading volume and therefore robust market maker activity and good market quality.[290] To address these concerns, both commenters recommend that NYSE Arca limit the type of ETPs permitted into the Fixed Incentive Program based on trading volume.[291] One commenter argues that if an ETP without an LMM has sufficient market maker activity to generate a consistent, fair, and orderly market, then there is no compelling rationale for the issuer to pay for an LMM, and such payments should not be permitted.[292] Do commenters agree or disagree with these comments? Why or why not? Specifically, should NYSE Arca adopt liquidity or other market quality requirements for ETPs that may participate in the Fixed Incentive Program? Would this help to alleviate the concerns voiced by commenters over the NYSE Arca Proposal? Why or why not?

8. One commenter expressed the view that the Programs represent a subsidization of ETPs that, on their own, are unable to generate much trading volume.[293] Do commenters agree with this view? Why or why not? If commenters agree, what are their views on whether such ETPs should be included within the Program or be ''allowed to fail'' (or simply to trade at a wider spread) rather than artificially propped up by the Programs, as one commenter suggests? [294] Furthermore, should such ETPs be allowed to continue in the Programs indefinitely? Why or why not? Would the public interest and the protection of investors be better served if there was a time limit on participation in the Programs? Why or why not?

9. Under either of the SRO Proposals, issuers would have the discretion to exit the respective Program with respect to a particular ETP (subject to the requirements outlined in the respective SRO Proposals). Please provide comment on how, if at all, the liquidity or other market quality characteristics of an ETP participating in a Program may or may not be affected once the ETP is no longer in such Program. For example, if the issuer of the ETP ceases making payments under a Program, could removal of that ETP from a Program lead to unexpected illiquidity and/or trading disruptions for the ETP? Why or why not? If an ETP is removed from a Program, could such removal impact the spreads in the ETP? If so, why? If not, why not? If commenters believe that there may be a potential impact on market quality characteristics, do commenters believe that investors should be provided disclosure of potential impacts? If so, what type of disclosure would be effective, and why?

10. If commenters believe that removal of an ETP from a Program would impact market quality characteristics of the ETP, what are the implications, if any, for investors? For example, how might removal impact an investor's ability to buy or sell shares of the ETP during or after removal from the Program? If commenters believe that removal of an ETP from a Program could potentially negatively impact liquidity, are there other potential solutions to address this concern? For example, should the ETP sponsor allow all investors (including retail investors) to redeem their shares of the fund if the ETP exits the program?

11. Under either of the SRO Proposals, issuers and market makers would have discretion to choose to enter into the respective Program. One commenter questions whether

[282] *See* NASDAQ Response Letter at 2.

[283] *See* NASDAQ Response Letter at 1.

[284] *See* Weaver Letter at 8.

[285] *See* Knight Letter at 2.

[286] *See* ETF Consultants Letter at 7.

[287] *See* NASDAQ Vanguard Letter at 5.

[288] *See id.*

[289] *See* NYSE Arca ICI Letter at 3 and NYSE Arca Vanguard Letter at 3.

[290] *See* NYSE Arca Vanguard Letter at 3.

[291] *See* NYSE Arca ICI Letter at 3 and NYSE Arca Vanguard Letter at 3. One of these commenters states that other market quality criteria would also be acceptable. *See* NYSE Arca Vanguard Letter at 3, n.9.

[292] *See* NYSE Arca Vanguard Letter at 3, n.9.

[293] *See* NASDAQ Vanguard Letter at 5.

[294] *See* IR Letter at 2.

competitive forces will essentially render the MQP compulsory, forcing ETPs into a ''pay-to-play'' environment where new ETPs must pay for it to launch and existing ETPs must pay to maintain quality markets.[295] This commenter raises a similar concern for the Fixed Incentive Program.[296] Do commenters agree with this concern? Why or why not? If so, should the Commission be concerned with this outcome? Why or why not? How might ETPs that do *not* participate in a Program (even if they qualify for participation), for whatever reason, be affected by the Programs, if at all? For example, will market makers gravitate to the ETPs that participate and avoid those that do not participate, potentially rendering non-participating ETPs as funds with diminished market making activity? Under this scenario, even if the Programs have the desired effect of enhancing market quality for participating ETPs, might they have the unintended effect of diminishing market quality (widening spreads and limiting book depth) in non-participating ETPs? Why or why not? Or, could the Programs result in an unintended consequence of creating an over-supply of overall market maker services as a result?

12. More generally, is it possible for either Program to result in a prisoner's dilemma equilibrium, in which all eligible ETPs participate in the program and achieve limited benefits while paying higher fees? If so, how could the Programs be designed to prevent such an equilibrium? If not, why not? Are there other potential equilibria that these Programs should avoid and how could they be designed to avoid them? For example, would limiting the number of participating ETPs per fund sponsor, as proposed under the NYSE Arca Proposal, prevent the possibility of market makers pressuring ETP issuers to place every single listed ETP into the Program?

13. Two commenters voice concerns that LMMs in the Fixed Incentive Program would not have higher performance standards than LMMs not participating in the Fixed Incentive Program, and suggest that NYSE Arca impose higher performance standards on LMMs participating in the Fixed Incentive Program.[297] One commenter argues that requiring heightened performance standards to receive the Optional Incentive Fee would address conflict of interest concerns, may provide a greater incentive for LMMs to make better markets in ETPs, and would make the overall standards of the Fixed Incentive Program more transparent to issuers and investors.[298] Do commenters agree or disagree with this comment? Why or why not? Specifically, should NYSE Arca adopt higher performance standards for LLMs in the Fixed Incentive Program? Would this help to alleviate the concerns voiced by commenters over the NYSE Arca Proposal? Why or why not?

14. Under the NASDAQ Proposal, multiple market makers may compete for incentive payments under the MQP with respect to an MQP Security. Under the NYSE Arca Proposal, a single market maker (LMM) would be able to receive incentive payments under the Fixed Income Program with respect to a security in the program. How, if at all, would having multiple Market Makers competing for payments under NASDAQ's MQP impact the potential benefits of its program? How, if at all, would having only one Market Maker be eligible to receive payments under the NYSE Arca's Fixed Incentive Program impact the potential benefits of its program?

15. Under the NASDAQ Proposal, an MQP Company that wants to participate in the MQP must submit an application in the form prescribed by NASDAQ, which may limit the number of MQP Securities that such MQP Company may list in the MQP based on factors relating to current and expected liquidity characteristics of the MQP Securities, the projected initial and continued market quality needs of the MQP Securities, and the trading characteristics of the MQP Securities (*e.g.,* quoting, trading, and volume).[299] In addition, for an MQP Company to be eligible to participate in the MQP, NASDAQ must have accepted the MQP Company's application in respect of an MQP Security, the MQP Security must meet all requirements to be listed on NASDAQ, and the MQP Security must meet all NASDAQ requirements for continued listing at all times the MQP Security participates in the MQP.[300] Under the NYSE Arca Proposal, an issuer that wants to have an ETP participate in the Fixed Incentive Program must submit a written application in a form prescribed by NYSE Arca, provided that an issuer may not have more than 5 existing ETPs that are listed on NYSE Arca prior to the pilot participate in the Fixed Incentive Program.[301] In addition, to be eligible to participate, an issuer must be current in all payments due to NYSE Arca if it has other securities listed on NYSE Arca and must be current in all payments due to NYSE Arca and compliant with continued listing standards for the ETP proposed for inclusion if the issuer elects to participate in the Fixed Incentive Program after listing such ETP on NYSE Arca.[302] With respect to each proposal, do commenters agree that the applicable criteria defining participation eligibility for the ETPs are sufficiently objective and clear? If not, do the criteria raise concerns? If so, why, and if not, why not? Should the Programs establish additional criteria for participation for ETPs, other than those that are proposed? *If so, what criteria do commenters suggest, and why?*

16. Under the NASDAQ Proposal, the MQP Company would be paying the MQP Fee. The term ''MQP Company'' is defined as ''a fund sponsor or other entity that lists one or more MQP Securities on NASDAQ pursuant to the MQP.'' [303] NASDAQ has indicated in the NASDAQ Response Letter that the entity paying the MQP Fee would be the ETF sponsor, rather than the ETF itself.[304] Under the NASDAQ Proposal, ETFs, TIRS and LSs could all qualify to be MQP Securities. Thus, while NASDAQ indicates that only ETF sponsors would be paying the MQP Fee, this only relates to ETFs, and does not apply to the TIRs and LSs, which may not have ''sponsor'' arrangements. Do commenters believe that the entity that would pay the MQP Fee under NASDAQ's proposal is sufficiently clear? If not, how would commenters suggest clarifying the definition of MQP Company as it pertains to each specific type of MQP Security?

17. Under the NYSE Arca Proposal, the Optional Incentive Fee for each ETP in the Fixed Incentive Program would be paid by the issuer.[305] The term ''issuer'' is not defined in the NYSE Arca Proposal or elsewhere in the NYSE Arca Equities Rules. Two commenters believe that it is unclear from NYSE Arca's Proposal whether the entity paying the Optional Incentive Fee would be the ETP sponsor or the fund itself. Do commenters believe that the entity that would pay the Optional Incentive Fee under NYSE Arca's proposal is sufficiently clear? If not,

[295] *See* NASDAQ Vanguard Letter at 4.

[296] *See* NYSE Arca Vanguard Letter at 2, n.7.

[297] *See* NYSE Arca ICI Letter at 3 and NYSE Arca Vanguard Letter at 3.

[298] *See* NYSE Arca ICI Letter at 3.

[299] *See* proposed NASDAQ Rule 5950(a)(1)(A) and (B).

[300] *See* proposed NASDAQ Rule 5950(b)(1).

[301] *See* proposed NYSE Arca Equities Rule 8.800(b)(1).

[302] *See* proposed NYSE Arca Equities Rule 8.800(b)(2).

[303] *See* proposed NASDAQ Rule 5950(e)(7).

[304] *See* NASDAQ Response Letter at 20.

[305] *See* proposed NYSE Arca Equities Rule 8.800(c)(1).

how would commenters suggest clarifying the proposal?

18. NASDAQ is proposing to disclose on its Web site the acceptance of an MQP Company and MQP Market Maker into the MQP; the total number of MQP Securities that any one MQP Company may have in the MQP; the names of MQP Securities and the MQP Market Maker(s) in each MQP Security; the amount, if any, of any Supplemental MQP Fee and the Quote Share Payment and Trade Share Payment allocation determined by each MQP Company; and any limit on the number of MQP Market Makers that are permitted to register in an MQP Security. NYSE Arca proposes to provide notification on its Web site of the ETPs participating in the Fixed Incentive Program and the LMMs assigned to such ETPs. Is it likely that investors and other market participants would consult the Exchanges' Web sites for information about which securities and market makers are participating in the Programs? Would investors be able to easily distinguish quotations for ETPs that are in the Program from those that are not? Why or why not?

One commenter suggests that, in addition to NASDAQ's Web site, participation in the MQP also should be noted on the MQP Security's Web site and in regulatory disclosure documents.[306] Do commenters agree or disagree with this suggestion? Why or why not? Is there a need for additional disclosure to provide information to investors about issuer participation in the Programs that would allow investors to make better informed investment decisions at the time of purchase of ETPs in the Programs, including the potential consequences if an ETP is no longer in the Programs?

One commenter suggests that a ticker symbol identifier would be useful for products in the MQP.[307] NASDAQ asserts in its response to comments that such an identifier is unnecessary and that it would be undesirable ''to brand MQP products through symbology'' because the MQP is designed to be transparent through information to be disclosed on the Exchange's Web site.[308] Would investors be able to easily distinguish quotations for ETPs that are in the Program from those that are not? If not, should the Commission be concerned about this? If the Commission should be concerned, would a ticker symbol identifier for securities in the Programs help to address this concern? Why or why not? Are there other potential solutions?

19. Under the NYSE Arca Proposal, an issuer participating in the Fixed Incentive Program would be required to pay the Optional Incentive Fee in an amount between $10,000 and $40,000, which amount would be negotiated between the issuer and the LMM assigned to such issuer's ETP, and the final amount of such Optional Incentive Fee would not be publicly disclosed. Should NYSE Arca be required to disclose the final amount of such Optional Incentive Fee? Would such information be helpful to investors in determining whether to invest in an ETP in the Fixed Incentive Program? Why or why not?

20. A commenter suggests that NASDAQ be required to make available the data gathered under the pilot to ETP sponsors participating in the MQP.[309] This same commenter also supports the view that, with respect to the Fixed Incentive Program,[310] NYSE Arca should be required to publicly (and anonymously) disclose statistics on the performance of LMMs in the Program, as such information could be meaningful for investors and would help assess how much liquidity is being provided by LMMs under the Program.[311] Another commenter suggests that NASDAQ publicly disclose on a monthly basis each MQP Market Maker's share of Quote Share Payments and Trade Share Payments for each MQP Security the MQP Market Maker quotes/trades.[312] Should the Exchanges be required to disclose the data gathered under the Programs to the issuers participating in the Program? Should such information be required to be publicly disclosed? Should the Exchanges be required to publicly disclose (on an anonymous basis or otherwise) the performance of the market makers participating in the respective Programs during the pilot period? Should the Exchanges be required to provide to the Commission and publically disclose any analysis of the impact of the Programs? Would some or all of this information be useful for investors? Would the public disclosure provide useful data to academics or other members of the public to help assess the impact of the Programs? Would such analyses provide useful information to the Exchanges or Commission to help assess whether the Programs were operating in a manner consistent with the Exchange Act and are consistent with the protection of investors? For each question, please explain your answer.

21. With respect to the NASDAQ Proposal, two commenters suggest improvements to the implementation of the pilot to allow the Commission and NASDAQ to more effectively assess the impact of the MQP.[313] One of these commenters suggests that the pilot have a staggered introduction of MQP Securities with a randomized sequence, and a long enough pre- and post-event period (*e.g.,* 3 months) for each introduction to identify an effect.[314] In the NASDAQ Response Letter, NASDAQ states that a staggered introduction of MQP Securities and a randomized sequence would add ''un-needed complexity to the program, and is not necessary in light of the optional nature of the MQP.'' [315] The same commenter also suggests that NASDAQ provide the Commission with detailed reporting of all trades and quotes in all securities for a pre-event period and a post-event period (with MQP Market Maker trades and quotes flagged).[316] Another commenter, however, notes that any ''before and after'' data needed can be obtained by comparing trading and asset growth in existing products which move into the MQP after it is launched, and a period after an ETF launch without participation in MQP would be an unnecessary and inappropriate handicap for new ETFs.[317] NASDAQ states its belief that any pre-event period would be ''antithetical to the goal of the program to enhance liquidity of products as soon as possible.'' [318]

Another commenter believes NASDAQ should be required to monitor market quality metrics during the pilot not only for ETFs participating in the MQP, but also for ETFs that do not participate in the MQP, to determine whether the non-participating ETFs are negatively affected.[319] With respect to the NYSE Arca Proposal, one commenter believes it is important that NYSE Arca and the Commission have an opportunity to evaluate the impact of the program on the quality of markets in ETPs prior to considering its permanent approval, both with respect to ETPs

[306] *See* ETF Consultants Letter at 8.

[307] *See* Weaver Letter at 9.

[308] *See* NASDAQ Response Letter at 7–8.

[309] *See* NASDAQ ICI Letter at 3.

[310] Under the Fixed Incentive Program pilot, NYSE Arca states that it would provide the Commission with certain market quality data on a confidential basis each month. *See* NYSE Arca Notice, *supra* note 12, at 29422.

[311] *See* NYSE Arca ICI Letter at 4.

[312] *See* ETF Consultants Letter at 8.

[313] *See* Menkveld Letter at 4–5 and NASDAQ Vanguard Letter at 4–5.

[314] *See* Menkveld Letter at 4–5.

[315] *See* NASDAQ Response Letter at 9.

[316] *See id.*

[317] *See* ETF Consultants Letter at 8.

[318] *See id.*

[319] *See* NASDAQ Vanguard Letter at 4.

participating in the program and those ETPs that choose not to participate.[320]

Do commenters agree or disagree with these views? Why or why not? Would the structure of each pilot as proposed, as well as the data or other information proposed to be provided to the Commission, sufficiently help inform the Commission as to whether the MQP or the Fixed Incentive Program, as applicable, was working as intended to achieve each Exchange's stated objective? Why or why not? For example, would the applicable Exchange or the Commission be able to fully evaluate a Program without being able to compare the performance of a particular ETP before it enters the Program with its performance once it has entered the Program? Why or why not? Should securities be eligible for the Programs only after trading for some period of time (*e.g.,* 3–6 months) without the benefit of participating in the applicable Program? In addition, would the structure of each pilot as proposed and the data or other information to be provided to the Commission allow the Exchanges and the Commission to adequately assess commenters' concerns? If not, how should each Exchange amend its respective pilot structure and/or data items or other information to improve the ability of the Exchange and the Commission to be able to adequately assess commenters' concerns? Similarly, would the proposed pilot structures and submission of data items or other information be helpful to the Commission in determining whether the Programs are operating consistent with the requirements of the Exchange Act and the rules thereunder? If not, how should each Exchange amend its respective pilot structure and/or data items or other information to improve the chances that the pilot would operate consistent with the requirements of the Exchange Act and rules thereunder?

22. In addition to the data items and/or other information that the Exchanges have proposed to provide to the Commission, should each Exchange also provide analyses of its respective pilot that addresses the intended impacts of its Program? Have the Exchanges adequately responded to commenters' concerns? If not, should the Exchanges be required to supplement the public file with additional data and analyses on the impact of the Programs? What specific issues should any such analyses cover? Should the Exchanges provide empirical support for these analyses?

23. Under the NYSE Arca Proposal, NYSE Arca would retain a 5% administrative fee to be deducted from the Optional Incentive Fee paid by the ETP issuer.[321] NYSE Arca states that this fee would be reasonable to cover its costs of administering the program.[322] What are commenters views on whether a 5% administrative fee charged by NYSE Arca for participation in its Fixed Incentive Program would be reasonable? Do commenters believe that NYSE Arca has clearly and sufficiently explained why this fee is reasonable? Also, do commenters have a view as to whether this fee would or would not impact the Exchange's incentives when administering the Program? If so, how so? If not, why not?

24. Are there any alternative means of addressing the concerns of Rule 102 of Regulation M, which could be conditions to exemptive relief from that provision? Please specify particular conditions that commenters believe would be appropriate to address the Regulation M concerns.

25. Do commenters believe the ''incubation'' period potentially provided by these Programs for newly listed ETPs will affect the decision making process of ETP sponsors concerning which ETP products to bring to market or not to bring to market? Why or why not?

26. Section 6(b)(8) of the Exchange Act[323] requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Both NASDAQ and NYSE Arca represent they do not believe that their respective Programs will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[324] What are commenters views as to whether the Exchanges have sufficiently explained why their respective proposals do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act?

27. NASDAQ states that the MQP would be beneficial to the financial markets, to market participants including traders and investors, and to the economy in general. First, the Exchange proposes the MQP to encourage narrow spreads and liquid markets in situations that generally have not been, or may not be, conducive to naturally having such markets. In NASDAQ's view, the securities that comprise these markets may include less actively traded or less well known ETF products that are made up of securities of less well known or start-up companies as components.[325] Second, in rewarding Market Makers that are willing to ''go the extra mile'' to develop liquid markets for MQP Securities, NASDAQ asserts that the MQP would clearly benefit traders and investors by encouraging more quote competition, narrower spreads, and greater liquidity. Third, NASDAQ asserts that the MQP will lower transaction costs and enhance liquidity in both ETFs and their components, making those securities more attractive to a broader range of investors. In so doing, NASDAQ states that the MQP will help companies access capital to invest and grow. And fourth, NASDAQ asserts that the MQP may attract smaller, less developed companies and investment opportunities to a regulated and transparent market and thereby serve the dual function of providing access to on-Exchange listing while expanding investment and trading opportunities to market participants and investors.[326] NYSE Arca states that the Fixed Incentive Program is designed to encourage additional market makers to pursue LMM assignments and thereby support the provision of consistent liquidity in ETPs listed on the Exchange, and further states that the assignment of an LMM is a critical component of the promotion of a consistent, fair and orderly market in ETPs on the Exchange.[327]

Do commenters agree or disagree with NASDAQ's and NYSE Arca's assertions as to the Programs' potential impact on efficiency, competition, and capital formation? Why or why not? Generally, do commenters have any other views as to whether and, if so, how each of the Programs would impact efficiency, competition, and capital formation? Do the proposed pilot structures, for example, promote efficiency, competition, and capital formation? Why or why not?

Comments may be submitted by any of the following methods:

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[320] *See* NYSE Arca ICI Letter at 4.

[321] *See* NYSE Arca Notice, *supra* note 12, at 29421, n.12. NASDAQ does not propose any similar fee in its proposal.

[322] *See* NYSE Arca Notice, *supra* note 12 at 29422.

[323] 15 U.S.C. 78f(b)(8).

[324] *See* NASDAQ Notice, *supra* note 4, at 22050–51; NYSE Arca Notice, *supra* note 12, at 29423.

[325] *See* NASDAQ Notice, *supra* note 4, at 22043, n.12 (''These small companies and their securities (whether components of listed products like ETFs or direct listings) have been widely recognized as essential to job growth and creation and, by extension, to the health of the economy. Being included in a successful ETF can provide the stocks of these companies with enhanced liquidity and exposure, enabling them to attract investors and access capital markets to fund investment and growth'').

[326] *See* NASDAQ Notice, *supra* note 4, at 22043.

[327] *See* NYSE Arca Notice, *supra* note 12, at 29420, 29421–29422.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Numbers SR–NASDAQ–2012–043 and/or SR–NYSEArca–2012–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NASDAQ–2012–043 and/or SR–NYSEArca–2012–37. These file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the SRO Proposals that are filed with the Commission, and all written communications relating to the SRO Proposals between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the Exchanges. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Numbers SR–NASDAQ–2012–043 and/or SR–NYSEArca–2012–37 and should be submitted on or before August 16, 2012. Rebuttal comments should be submitted by August 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[328]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17349 Filed 7–16–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67388; File No. SR–NASDAQ–2012–83]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Customer Rebates in Penny Pilot Options

July 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on June 29, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify Chapter XV, entitled ''Option Pricing,'' at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend a Penny Pilot [3] Option Customer Rebate to Add Liquidity. The Exchange also proposes a minor technical amendment.

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on July 2, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled ''Option Pricing,'' at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. Specifically, the Exchange is proposing to modify the five tier structure for paying Customer Rebates to Add Liquidity in Penny Pilot Options. The Exchange proposes to amend the qualifications for a Tier 4 Customer Rebate to Add Liquidity to further incentivize NOM Participants to route Customer orders in Penny Pilot Options to the Exchange by providing NOM Participants another means of achieving a certain volume criteria to qualify for a rebate. The Exchange believes that incentivizing NOM Participants to send additional Customer orders in Penny Pilot Options to the Exchange will benefit all market participants by adding liquidity to the market.

Specifically, the Exchange currently pays a Customer Rebate to Add Liquidity in Penny Pilot Options based on the following tier structure:

[328] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through June 30, 2012. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026 (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extending and replacing Penny Pilot); SR–NADAQ–2012–075 (not published) (notice of filing and immediate effectiveness extending and replacing Penny Pilot). *See also* Exchange Rule Chapter VI, Section 5.

Monthly volume	Rebate to add liquidity
Tier 1 Participant adds Customer liquidity of up to 14,999 contracts per day in a month	$0.26
Tier 2 Participant adds Customer liquidity of 15,000 to 49,999 contracts per day in a month	0.38
Tier 3 Participant adds Customer liquidity of 50,000 to 74,999 contracts per day in a month	0.43
Tier 4 Participant adds Customer liquidity of 75,000 or more contracts per day in a month	0.44
Tier 5 Participant adds (1) Customer liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014; and (3) the Participant executed at least one order on NASDAQ's equity market	0.42

Currently, Tier 4 firms that add Customer liquidity of 75,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options receive a rebate of $0.44 per contract. The Exchange proposes to amend the Tier 4 Customer rebate by also paying the $0.44 per contract Customer Rebate to Add Liquidity in Penny Pilot Options when a Participant has a total volume of 100,000 or more contracts per day in a month. Therefore, in order to qualify for the Tier 4 Customer Rebate to Add Liquidity in Penny Pilot Options, a Participant that add Customer liquidity of 75,000 or more contracts per day in a month or a has total volume of 100,000 or more contracts per day in a month would receive a rebate of $0.44 per contract.[4] For purposes of Tier 4, ''Total Volume'' shall be defined as Customer, Professional, Firm, NOM Market Maker[5] and Non-NOM Market Maker volume in Penny Pilot Options which either adds or removes liquidity. The Exchange is also proposing to add this definition of Total Volume in Chapter XV, Section 2(1).

The Exchange also proposes a minor technical amendment to redesignate note ''a'' currently referencing Tier 5 with ''b'' and insert a new note ''a'' related to Tier 4.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that the proposed amended pricing tier is reasonable, equitable and not unfairly discriminatory because it is part of an existing program[8] to encourage broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange. The Exchange believes the existing monthly volume thresholds have incentivized firms that route Customer orders to the Exchange to increase Customer order flow to the Exchange. The Exchange desires to continue to encourage firms that route Customer orders to increase Customer order flow to the Exchange by providing an additional opportunity to qualify for a Customer Rebate and earn a rebate.

The Exchange believes that amending Tier 4 to provide that NOM Participants that have total volume of 100,000 or more contracts per day in a month may also qualify for the Tier 4 rebate of $0.44 per contract in addition to those NOM Participants that add Customer liquidity of 75,000 or more contracts in Penny Pilot Options in a month is reasonable because it allows additional NOM Participants to qualify for the Customer rebate. Total Volume includes a Customer, Professional, Firm, NOM Market Maker and Non-NOM Market Maker Penny Pilot Option that either added or removed liquidity. The Exchange believes that this added incentive would allow additional NOM Participants to qualify and receive the Customer rebate.

The Exchange believes that amending Tier 4 to provide that NOM Participants who have total volume of 100,000 or more contracts per day in a month may also qualify for the Tier 4 rebate of $0.44 per contract in addition to those NOM Participants that add Customer liquidity of 75,000 or more contracts in Penny Pilot Options in a month is equitable and not unfairly discriminatory because all NOM Participants that transact Customer orders in Penny Options are eligible for the Customer rebates.[9]

The Exchange believes that the calculation of Total Volume for purposes of qualifying for amended Tier 4 is reasonable because the Exchange is providing NOM Participants with an added opportunity to receive a Tier 4 Customer rebate by adding volume from all market participants, not only Customer volume. The Exchange believes this amendment will allow a greater number of NOM Participants to qualify for the Tier 4 rebate.

The Exchange believes that the calculation of Total Volume for purposes of qualifying for amended Tier 4 is equitable and not unfairly discriminatory because all NOM Participants that transact Customer orders in Penny Pilot Options would be eligible to qualify for a rebate starting with the first executed contract that added Customer liquidity.[10] The Exchange's proposal to renumber the notes to add a new note referencing Tier 4 is reasonable, equitable and not unfairly discriminatory because these amendments provide greater clarity and accuracy to the Rule text.

The Exchange operates in a highly competitive market comprised of ten U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebate opportunities to be inadequate. The Exchange believes that the proposed rebate scheme is competitive and similar to other fees, rebates and tier opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts rebates present on the Exchange

[4] The Exchange is not proposing to amend the $0.44 per contact rebate or any other Customer rebate tier.

[5] A NOM Participant must be registered as such pursuant to Chapter VII, Section 2 of the NOM Rules, and must also remain in good standing pursuant to Chapter VII, Section 4.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] The Exchange adopted these monthly volume achievement tiers in September 2011. *See* Securities Exchange Act Release Nos. 65317 (September 12, 2011), 76 FR 57778 (September 16, 2011) (SR–NASDAQ–2011–124), 65317 (September 12, 2011), 76 FR 61129 (October 3, 2011) (SR–NASDAQ–2011–127), 66126 (January 10, 2012), 77 FR 2335 (January 17, 2012) (SR–NASDAQ–2012–003), 66360 (February 8, 2012), 77 FR 8312 (February 14, 2012) (SR–NASDAQ–2012–022) and 66768 (April 6, 2012), 77 FR 22015 (April 12, 2012) (SR–NASDAQ–2012–048).

[9] Tier 1 pays a rebate for NOM Participants that add Customer liquidity of up to 14,999 contracts per day in a month of Penny Options. There is no required minimum volume of Customer orders to qualify for a Customer Rebate to Add Liquidity.

[10] *See* note 9.

today and substantially influences the proposal set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, NASDAQ has designed its fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading. The Exchange believes that incentivizing NOM Participants to transact greater Customer volume on the Exchange benefits all market participants because of the increased liquidity to the market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–83. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–83 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17273 Filed 7–16–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13103 and #13104]

Florida Disaster Number FL–00071

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of FLORIDA (FEMA–4068–DR), dated 07/03/2012.

Incident: Tropical Storm Debby.

Incident Period: 06/23/2012 and continuing.

Effective Date: 07/09/2012.

Physical Loan Application Deadline Date: 09/04/2012.

EIDL Loan Application Deadline Date: 04/03/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Florida, dated 07/03/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Duval; Nassau; Union.

Contiguous Counties: (Economic Injury Loans Only):

Georgia: Camden.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–17392 Filed 7–16–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–28]

Petition for Exemption; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption; Reopening of comment period.

SUMMARY: This action reopens the comment period for a petition for exemption that was published on May 24, 2012. The relief sought in the petition for exemption would permit ICON Aircraft to incorporate a Spin-Resistant Airframe (SRA) in the ICON A5 at a weight above the current Light-Sport Aircraft (LSA) definition. Independent Aircraft Inc. has requested

a reopening of the comment period to allow additional time to address issues associated with an increase in weight of the ICON A5.

DATES: The comment period for the petition for exemption published on May 24, 2012 (77 FR 31063) closed June 13, 2012, and is reopened until July 27, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–0514 using any of the following methods:

• *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carol Greb, ACE–114, (816) 329–4136, Federal Aviation Administration, 901 Locust St., Kansas City, MO 64106.

Background: On May 24, 2012, the FAA published the petition for exemption (77 FR 31063) from ICON Aircraft to allow incorporation of a Spin-Resistant Airframe (SRA) in the ICON A5 at a weight above the current Light-Sport Aircraft (LSA) definition. The FAA requested that comments on the petition be received on or before June 13, 2012, which allowed for a 20 day comment period as suggested by 14 CFR 11.89.

By petition submitted June 28, 2012, Independent Aircraft Inc. requested that the FAA reopen the comment period for 90 days to allow additional time to address issues associated with an increase in weight of the ICON A5. Since Independent Aircraft Inc. has already submitted their comments the FAA will reopen the comment period for an additional 10 days, in lieu of the 90 days requested, to assure that these and any other comments that may be received will be given full consideration.

Reopening of the Comment Period: The FAA has reviewed the request made by Independent Aircraft Inc. for additional time to comment to the petition for exemption (Docket No. FAA–2012–0514.) The petitioner has shown a substantive interest in the petition and good cause for additional time to comment. The FAA has determined that reopening the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for the petition for exemption [Docket No.: FAA–2012–0514] is reopened until July 27, 2012.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 9, 2012.

Lirio Liu,

Acting Director, Office of Rulemaking.

[FR Doc. 2012–17370 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Hancock County-Bar Harbor Airport, Trenton, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(d), notice is being given that the FAA is considering a request from Hancock County, Maine to waive the surplus property requirements for 0.77 acres of airport property located at Hancock County-Bar Harbor Airport, Trenton, Maine.

DATES: Comments must be received on or before August 16, 2012.

ADDRESSES: Send comments on this document to Mr. Barry J. Hammer at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7625.

FOR FURTHER INFORMATION CONTACT: Documents are available for review by appointment by contacting Ms. M. Allison Rogers, Telephone 207–667–7329 or by contacting Mr. Barry J. Hammer, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7625.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration is reviewing a request by Hancock County-Bar Harbor Airport to release 0.77 acres of airport property from surplus property obligations. The State of Maine is making improvements to a portion of State Highway ''43'' (Route 3) extending from just north of the airport access road to the Route 230 intersection.

The intersection upgrades include construction of a stub entrance for the future realignment of Caruso Drive which is the airport access road. The release will also allow the airport to sell the parcel to the State of Maine at fair market value, $9400 per appraisal, with the proceeds being deposited in an identifiable interest bearing account to be used for airport operating and maintenance expenses. The sale will benefit the airport both operationally and financially.

FAA funding was used in acquiring portions of the proposed parcel to be released. The largest portion of the airport originally was transferred from the U.S. Government through the War Assets Administration by agreement in 1947 and 1948. Additional parcels were subsequently acquired from private landowners during safety area improvements and extensions to the Runway 4 approach end. However, the portions of the parcels obtained and to be released are not needed for aeronautical purposes.

Issued in Burlington, Massachusetts on June 26, 2012.

Michel J. Hovan,

Acting Manager, Airports Division, New England Region.

[FR Doc. 2012–17290 Filed 7–16–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket FTA–2011–0055]

Environmental Justice: Final Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of final circular.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site final guidance in the form of a Circular (hereinafter ''EJ Circular'') on incorporating environmental justice principles into plans, projects, and activities that receive funding from FTA. This final guidance provides recommendations to State Departments of Transportation, Metropolitan Planning Organizations, public transportation providers, and other recipients of FTA funds on how to fully engage environmental justice populations in the public transportation decision-making process; how to determine whether environmental justice populations would be subjected to disproportionately high and adverse human health or environmental effects as a result of a transportation plan, project, or activity; and how to avoid, minimize, or mitigate these effects.

DATES: The effective date of the Circular is August 15, 2012.

FOR FURTHER INFORMATION CONTACT: For program questions, Amber Ontiveros, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey Avenue SE., Room E54–422, Washington, DC 20590, phone: (202) 366–4018, fax: (202) 366–3809, or email, *Amber.Ontiveros@dot.gov;* or for legal questions, Cecelia Comito, Office of Chief Counsel, 200 West Adams Street, Suite 320, Chicago, IL 60606, phone: (312)353–2789, or email, *Cecelia.Comito@dot.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Final Circular

This notice provides a summary of the final changes to the EJ Circular and responds to comments. The final Circular itself is not included in this notice; instead, an electronic version may be found on FTA's Web site, at *www.fta.dot.gov,* and in the docket, at *www.regulations.gov.* Paper copies of the final Circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366–4865.

Table of Contents

I. Overview

Prior to the issuance of Environmental Justice Circular 4703.1, ''Environmental Justice Policy Guidance for Federal Transit Administration Recipients,'' FTA guidance on incorporating principles of environmental justice into transportation decision-making processes consisted of a page in FTA Circular 4702.1A, ''Title VI and Title VI–Dependent Guidelines for FTA Recipients.'' Recipients of FTA funds often were confused about the relationship between Title VI of the Civil Rights Act of 1964 (Title VI) and environmental justice (EJ). With the new EJ Circular, FTA is providing additional guidance on environmental justice and is clarifying the relationship between environmental justice and Title VI. The EJ Circular provides guidance on the implementation of Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' (February 11, 1994) and U.S. Department of Transportation (DOT) Order 5610.2(a), ''Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (May 10, 2012).

On May 10, 2012, DOT issued Order 5610.2(a), updating and reaffirming DOT's policy to consider environmental justice principles in all DOT programs, policies, and activities. The May 2012 Order, updating DOT's original 1997 EJ Order, describes how the objectives of environmental justice will be integrated into transportation planning and programming, rulemaking, and policy formulation. The DOT Order sets forth steps to prevent disproportionately high and adverse effects on the environment and human health of minority and/or low-income populations through environmental justice analyses conducted as part of Federal transportation planning and National Environmental Policy Act (NEPA) provisions. It also describes the specific measures to be taken to address instances of disproportionately high and adverse effects and sets forth relevant definitions.

FTA's EJ Circular builds on the DOT Order, and provides further guidance for recipients for promoting principles of environmental justice in their public transportation decision-making processes, programs, plans and activities. FTA conducted extensive outreach to develop the final Circular. FTA sponsored Information Sessions in five cities around the country regarding the proposed new EJ Circular as well as proposed revisions to the Title VI Circular (see docket FTA–2011–0054 for more information on the proposed Title VI Circular). The meetings provided a forum for FTA staff to make presentations about the two proposed Circulars and allowed attendees an opportunity to ask clarifying questions. In addition, FTA participated in various conferences occurring in October and November 2011, hosted several webinars, and participated in a U.S. DOT webinar related to environmental justice. FTA received written comments to the docket related to the proposed EJ Circular from approximately 57 providers of public transportation, State Departments of Transportation, advocacy groups, individuals, metropolitan planning organizations, and the American Public Transportation Association. Some comments were submitted on behalf of multiple entities.

FTA's new EJ Circular is intended to provide recipients with a distinct framework to assist them as they integrate principles of environmental justice into their public transportation decision-making processes, from planning through project development and implementation.

FTA expects the additional clarification provided by both the new EJ Circular and the final Title VI Circular, to be published later this summer, will provide recipients the guidance they need to properly incorporate both Title VI and EJ into their public transportation decision-making. This notice provides a summary of the EJ Circular and addresses comments received in response to the September 29, 2011, **Federal Register** notice (76 FR 60590).

II. Chapter-by-Chapter Analysis

A. General Comments

This section addresses comments that were not directed at specific chapters, but to the Circular as a whole.

Some commenters expressed concerns about perceived administrative and financial burdens of the new Circular, stating that the Circular contained new requirements. These commenters also suggested that FTA exempt smaller transit agencies or rural transit agencies from the Circular. One commenter suggested that the new Circular contained additional ''requirements'' because the Title VI Circular only addressed environmental justice as it related to construction projects, whereas the new EJ Circular states that recipients are to consider EJ principles as part of all of their transportation decision-making. This last comment illustrates one of the reasons FTA decided to provide expanded guidance on environmental justice. By identifying only one example for consideration of environmental justice (i.e., construction projects) in the Title VI Circular, recipients incorrectly inferred that consideration of EJ principles is limited to only construction projects. It is not. As set forth in Executive Order 12898 and DOT Order 5610.2(a), EJ principles should be considered in all DOT programs, policies and activities.

Thus, the EJ Circular does not contain any new responsibilities for recipients. Recipients' responsibilities regarding environmental justice have been a part of FTA's annual Master Agreement, which is incorporated by reference and made a part of every grant agreement and cooperative agreement, for many years. Section 12.j. of FTA's October 1, 2011, Master Agreement requires recipients to promote environmental justice by following and facilitating FTA's compliance with Executive Order 12898, and following DOT's Order on environmental justice. The EJ Circular does not place any additional burdens on recipients; rather it provides additional guidance to assist recipients in promoting environmental justice.

Several comments addressed whether FTA should issue a separate EJ Circular. Most commenters expressed approval in providing separate Circulars on Title VI and environmental justice. However, a few commenters did not approve of separating the Circulars, noting that it would be less confusing if Title VI and EJ guidance continued to be in one combined Circular. FTA believes that providing separate Circulars on Title VI and environmental justice will help eliminate the existing confusion between Title VI and environmental justice and provide greater clarity to recipients and the public. Moreover, expanding the Title VI Circular to include the information now in the EJ Circular would make the Title VI Circular unwieldy.

Numerous commenters made suggestions on the structure of the proposed Circular. Although several commenters liked the plain language style used in the EJ Circular, others suggested that the Circular should be revised to reflect the outline organizational structure used in the Title VI and other FTA Circulars and should contain separate chapters based on the type of recipient (i.e., transit agencies, metropolitan planning organizations, etc.). Other commenters suggested reorganizing the order of the chapters in the EJ Circular by placing Chapters IV and V, which address *when* to do an EJ analysis, before Chapters II and III, which address *how* to do an EJ analysis. Additionally, several commenters suggested moving the information in proposed Chapter VI, which discusses the differences and similarities between Title VI and EJ, to Chapter I. Several commenters asked that FTA provide more examples and explanation of the topics covered in the Circular.

FTA considered all of these suggestions and incorporated several of them into the final EJ Circular. FTA took a hard look at the Circular's readability to ensure that it would be understandable to recipients, transportation planners, and the general public. Where appropriate, headings or graphic illustrations have been added. FTA reviewed all of the definitions and terms used in the Circular to ensure that they are consistent with Executive Order 12898, DOT Order 5610.2(a), and other federal guidance. Additionally, FTA verified that the definitions used in the EJ Circular are the same as those in the revised Title VI Circular. FTA, however, declined to incorporate concepts that are applicable only to Title VI into the EJ Circular.

The suggestion to restructure the chapters informed our decision to combine Chapters I and VI. FTA declined to use the outline format used in other FTA Circulars because such a format would not contribute to issues of readability and accessibility of the Circular by the general public and non-transit professionals. FTA also did not revise the Circular to set out specific guidance based on the type of recipient because such distinctions are not as relevant when considering EJ principles in transportation decision-making.

Several commenters wanted clarification on whether FTA would review EJ activities of recipients and the extent of the State departments of transportation's responsibility for subrecipients. Other commenters wanted FTA to incorporate strong accountability measures into the Circular, including requirements for documentation, reporting EJ activities alongside or within Title VI programs, monitoring compliance, public challenges of EJ analyses, and an EJ complaint process. Others questioned whether FTA has sufficient resources for review and enforcement of the EJ Circular.

FTA currently reviews EJ analyses prepared as part of the NEPA process. Additionally, FTA monitors recipients' efforts to promote EJ through its oversight reviews, including triennial reviews, planning certification reviews, and state management reviews. FTA expects recipients to maintain documentation of EJ analyses undertaken as part of their transportation planning and decision-making processes for FTA's review during its normal monitoring activities described above.

FTA declined to provide an enforcement mechanism for environmental justice similar to that provided in the Title VI Circular. Section 6–609 of the Executive Order explicitly states that the E.O. ''is intended only to improve the internal management of the executive branch'' and that it ''shall not be construed to create any right to judicial review involving the compliance or non-compliance of the United States, its agencies, its officers or any other person with this order.'' Through the Master Agreement recipients are required to promote environmental justice and follow the Executive Order and DOT Order. FTA will monitor recipients' efforts to address EJ concerns through its normal oversight activities and NEPA reviews.

Several commenters asked for clarification on the use of the word ''should,'' and indicated they were concerned ''should'' would become ''shall'' over time. FTA has reviewed the final Circular and made revisions as appropriate, limiting use of the word ''should.''

Commenters also urged FTA to coordinate its EJ guidance with other Federal agencies, particularly with FHWA. FTA continues to work with FHWA and DOT to ensure consistency with promoting environmental justice, including our collaborative efforts with the Federal Interagency Working Group on Environmental Justice and our joint efforts with FHWA on planning certification reviews. Additionally, all DOT modal administrations are subject to DOT Order 5610.2(a).

Multiple commenters asked questions about whether the EJ Circular requires a separate analysis on service and fare equity from that required under Title VI. One commenter suggested requiring one analysis or report for assessing service and fare changes on EJ populations, rather than separate ones for Title VI and EJ. Another commenter suggested centralizing the service and fare change discussion in the Title VI Circular only. Some commenters suggested allowing recipients' flexibility in determining what type of service changes would require EJ analysis. Several comments suggested that, where a provider builds a project for another provider, FTA should require a service and fare equity analysis to determine the impact on minority populations of both systems. FTA considered these comments and decided that issues related to service and fare equity analyses should be consolidated in a single location in the final Title VI Circular. Consolidating FTA's guidance on service and fare equity analyses in the Title VI Circular will provide clarity to recipients and prevent duplication of efforts.

Several commenters asked for more clarification and examples. In particular, a commenter wanted FTA to clarify that EJ applies at the earliest stages of decision-making, while another wanted clarification as to whether the Circular is outcome- or process-based. Throughout the EJ Circular, FTA states that principles of environmental justice are to be considered throughout the transportation planning and project development processes. Addressing environmental justice is primarily a process-based activity, involving public outreach to EJ populations and evaluating whether there are disproportionate adverse effects on EJ populations. However, outcomes are also important. In the event disproportionate adverse effects on an EJ population, recipients must evaluate whether there are practicable alternatives to the action prior to taking the action.

B. Comments Beyond the Scope of the Circular

There were numerous comments that were outside the scope of the Circular, including comments on highway improvement projects, joint development policies, skeletal service, persons with disabilities, and the Americans with Disabilities Act (ADA). Several commenters also made comments on affordable housing, fair housing, and community development, which were unrelated to the EJ Circular. FTA is not responding to these comments because they are beyond the scope of the notice for the EJ Circular.

C. Chapter I—Environmental Justice, Title VI, and Public Transportation

Chapter I of the final Circular is an introductory chapter. It provides a brief background of the Executive Order and DOT Order on EJ, describes the purpose of the Circular, and presents the guiding EJ principles, derived from the DOT Order on environmental justice, that informs the rest of the Circular.

Several commenters suggested the discussion in Chapter VI of the Circular about the similarities and differences between Title VI and EJ be moved into Chapter I. FTA agreed with that suggestion, and revised chapter I to include the information from Chapter VI. At the core of this discussion was a table that compared Title VI and EJ. Several commenters also provided suggestions on the table, suggesting the table be enhanced and expanded, and also to discuss the scope, requirements, and applicability of Title VI and EJ. FTA has implemented many of those suggestions where appropriate, keeping in mind FTA has a separate Title VI Circular and did not want to repeat everything in the EJ Circular that is in the Title VI Circular.

Several of the comments on Chapter I asked for clarification, specifically as to what it means to consider EJ principles; how EJ principles are addressed in different chapters; and how disproportionately high and adverse effects apply to majority minority areas. FTA has expanded the discussions of these topics in Chapter I and throughout the Circular. FTA also has clarified the Circular so that the discussions of the applicability of the EJ analytical framework are consistent throughout the Circular.

One commenter applauded Chapter I, stating it offered a needed clarification on the important role of the EJ community throughout the planning and development process to ensure EJ concerns are meaningfully addressed.

Another commenter suggested clarifying language to reflect potential or estimated effects. FTA believes the references to potential effects, in the ''Guiding EJ Principles'' and ''Conducting an EJ Analysis'' sections, effectively convey that potential effects are to be considered.

One commenter suggested adding a section on avoiding, minimizing, or mitigating adverse effects. FTA has revised chapters II and V to include more discussion about mitigation.

D. Chapter II—Conducting an Environmental Justice Analysis

This chapter is designed to provide an analytical framework for incorporating principles of environmental justice when considering transportation plans, programs, projects, and activities. In response to comments, this chapter has been reworked to provide more detailed guidance on conducting an EJ analysis.

FTA received many comments on Chapter II, including multiple positive comments and suggestions for improving this chapter to provide more clarity. Additionally, many commenters raised questions about the terms used in the chapter, prompting FTA to take a hard look at the chapter to determine whether it provided sufficient information for recipients to undertake an EJ analysis. Based on this review, FTA decided that the chapter needed to be reorganized and that certain sections needed to be expanded.

FTA proposed adopting the Council for Environmental Quality (CEQ) guidance on determining whether a minority population is present. Under this guidance, CEQ suggests that a minority population may be present if the minority population percentage of the affected area is ''meaningfully greater'' than the minority population percentage in the general population or other ''appropriate unit of geographic analysis.'' The term ''affected area'' is an area in which the proposed project or activity will or may have an effect. CEQ suggests minority populations will always be ''meaningfully greater'' when the percentage of minorities exceeds 50 percent, regardless of what the percentage of minority populations is in the comparison geographic unit. FTA had suggested using this threshold for both minority populations and low-income populations. Commenters were concerned that the ''50 percent threshold'' was a minimum requirement, and that MPOs and others were not free to establish lower thresholds, if appropriate. Others suggested that ''meaningfully greater'' should be defined consistent with how ''minority routes'' are defined in the Title VI Circular and FTA should use the ''average percentage of the minority population in the service area'' standard outlined in the Title VI Circular. Other commenters liked the proposed threshold. Some commenters were concerned that the standard ''meaningfully greater'' would be difficult to apply in practice.

Based on the comments FTA received on this topic, we have decided not to adopt this threshold test, finding that the threshold was too confusing for recipients and resulted in further blurring of Title VI and EJ. FTA has removed any reference to adopting the CEQ threshold. In its place is a discussion of the importance of considering whether there are disproportionately high and adverse effects on EJ populations; these effects are the basis for addressing environmental justice concerns, not the size of the EJ populations. A very small minority or low-income population in the project, study, or planning area does not eliminate the possibility of a disproportionately high and adverse effect on these populations. Some commenters wrongly suggested that if minority or low-income populations are small (''statistically insignificant''), this means there is no environmental justice consideration. While the minority or low-income population in an area may be small, this does not eliminate the possibility of a disproportionately high and adverse effect of a proposed action. Thus, FTA has concluded that recipients should make EJ determinations based on effects, not on population size.

Commenters also asked questions about how to undertake an EJ analysis when the majority of the population in the affected area is minority or low-income. The fact that the majority of the population is minority or low-income does not relieve recipients from analyzing whether the proposed action may result in disproportionately high and adverse human health or environmental effects. Under DOT Order 5610.2(a), whether an adverse effect is ''disproportionately high'' on minority and low-income populations depends on whether that effect is (1) predominantly borne by an EJ population, or (2) will be suffered by the EJ population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-EJ population.

FTA received a number of comments on the ''Preparing a Residential Demographic Profile'' section. We have taken these comments into consideration in the revised ''Know Your Community'' section, which incorporates the ''Preparing a Residential Demographic Profile'' section. One commenter stated that the inclusion of specific requirements to conduct equity analyses and analyze demographic data will help to lift out some of the ''hidden'' impacts of transit projects, such as cumulative impacts of a series of transit service cuts or fare increases. Multiple commenters expressed that American Community Survey (ACS) data is unreliable, that Census data should be more readily accessible, and that recipients should be allowed to use reliable existing data or complement Census data with local surveys. We have included ACS data as a source of demographic data because it is a useful tool that is, along with the Census, readily available. The ACS and Census are not the exclusive sources of demographic data, and local data can be used to refine ACS and Census data. Any demographic data used by recipients must be from a reliable source. Multiple commenters also wanted more guidance and flexibility regarding area of study and data sets, including information that goes beyond where EJ populations reside to where they work and receive benefits.

One commenter suggested using the Census Bureau poverty threshold in place of the U.S. Department of Health and Human Services (HHS) threshold for the definition of low-income. The definition in the proposed Circular is the same as that in the DOT EJ Order, and for Departmental consistency, we have retained that definition. However, recipients may use a more inclusive definition of low-income, e.g., 150% of poverty level, or incomes at a certain percentage of median household income, etc., if they choose, provided the threshold is at least as inclusive as the HHS poverty guidelines. FTA did revise the Circular text in response to comments suggesting changes regarding the use of Census block level and block group level data, NEPA references, and TIGER/Line file availability.

FTA received several comments regarding the Benefits and Burdens Analysis section. Commenters asked for clarification regarding the timing of an analysis, the types of projects or activities that require an analysis, whether a separate analysis would be required for Transportation Improvement Programs (TIP) and long-range plans, and whether special or promotional fares are subject to an analysis before implementation. Multiple commenters suggested FTA specify that an EJ analysis be done after alternatives are identified and before a preferred alternative is selected. Another commenter suggested that this type of analysis should apply only to specific transportation improvement projects, and not to Metropolitan Planning Organization (MPO) plans, which should be recognized as reflective of the time when the plan is developed. Another commenter suggested FTA clarify that benefits and burdens analysis must assess the burden of lack of service, while another suggested that metrics should be tailored to a specific impact, on which EJ populations would then provide input.

Many of the above comments reflect a misunderstanding of what it means to promote the principles of environmental justice in public transportation plans, programs, activities and projects. EJ is not a one-time analysis conducted at a specific moment in time, never to be revisited again. Throughout the transportation planning process and project implementation, there are opportunities for recipients to engage the public, including members of EJ communities. FTA has attempted to clarify this analysis with the section ''Determining Whether Adverse Effect Is Disproportionately High.'' FTA has included more discussion and updated graphics on potential impacts and when an EJ analysis may be appropriate. Fare equity analyses are addressed in FTA's Title VI Circular, and not in the EJ Circular. An EJ analysis should be included in environmental reviews under NEPA, and impacts on EJ populations should be analyzed and addressed as part of the environmental impact statement (EIS), environmental assessment (EA) or categorical exclusion (CE).

E. Chapter III—Achieving Meaningful Public Engagement With Environmental Justice Populations

Chapter III contains recommended strategies and techniques for ensuring that EJ populations have a voice in the decision-making process. In response to comments, this chapter has been revised to provide more clarity on our recommendations to make the public engagement process more inclusive and user-friendly, including the separation of the section on ''Hosting a Successful Public Meeting.'' This chapter also describes non-traditional outreach strategies that may result in greater participation by EJ populations.

FTA received numerous comments on chapter III, with positive comments on the emphasis on public participation throughout the transportation planning process, including the parts on community advisory committees and public engagement teams, and the traditional and non-traditional outreach techniques. Multiple commenters made suggestions on public engagement and outreach. One commenter suggested using the term ''public engagement'' or ''participation,'' rather than the weaker term ''public involvement.'' In response to this comment, FTA has replaced references to ''public involvement'' with ''public engagement'' or ''participation.''

Several commenters asked for expanded guidance, particularly on how to consider the needs of EJ populations, how to do so at the earliest stages of planning, and how to incorporate those needs in recipients' plans. These issues related to considering EJ population needs and planning are addressed in chapter IV, particularly in the ''Strategies for Public Engagement for Planning Activities'' and ''Strategies to Achieve Full Public Participation for Planning Activities'' sections, as well as in the FTA/FHWA joint planning regulations (23 CFR part 450). Another commenter asked for clarification on the timing of outreach; i.e., whether outreach was to take place during the planning process or at the earliest stages of planning. Outreach should be done early in the planning process and continue throughout the transportation decision-making process, and this is reflected in the ''Public Engagement as Part of Transportation Planning'' section.

FTA has clarified guidance on public engagement and has stated that public engagement is integral to good transportation planning. Some commenters suggested the need to balance public input and provider capacity and resources, which includes the acceptance of local outreach practices. FTA has clarified the language in the chapter that engagement strategies will need to be evaluated on a case-by-case basis and FTA encourages local outreach practices that will effectively reach community members.

Additional outreach techniques that commenters suggested include advertising public meetings via multilingual door-to-door campaigns, working with community groups to develop public engagement plans, emphasizing the use of alternatively formatted materials for people with disabilities, and translated documents to reach limited-English proficient (LEP) persons, placing notices on vehicles and electronic displays, conducting onboard rider interviews, hosting meet and greet forums at terminals, avoiding blast public engagement techniques that may upset riders, and holding events and workshops at shopping centers, adult schools, or restaurants in areas where EJ populations live, work, and relax. FTA welcomes these suggestions and encourages recipients to evaluate the use of different techniques for public engagement in their communities. As noted in the Circular, there is no one technique for effective engagement of EJ populations; rather each situation will drive the outreach techniques used. Some commenters suggested that FTA create a clearinghouse of information for EJ populations to access region-specific data, require data collection from populations that do not regularly use a recipient's services, supplement data collection with feedback from EJ communities on the quality of service, and require transit providers to engage housing and social service providers to identify transportation challenges and mitigation strategies. FTA is exploring the possibility of such a clearinghouse, but declines to require this data collection and dissemination at this time.

Several comments were made on the ''Getting to Know Your Community'' section. A few commenters stated that maps of disaggregated minority populations have limited use in determining outreach targets, while another commenter cautioned on relying too heavily on non-profit organizations to conduct outreach to the public. Disaggregated minority population maps may be more useful than aggregated minority population maps, as they will provide more specific information on EJ populations. At the very least, minority populations should be disaggregated from low-income populations. While outreach through non-profit organizations is important, they are one of several listed examples of non-traditional outreach, along with informal group meetings, digital media, direct mail, and community led events. Another commenter stated that FTA should require collection of demographic information to ensure public meeting attendees are from the local EJ population, should not allow recipients to delegate or contract out public engagement, and should require public meeting notices posted in obvious locations three weeks prior to the meeting. Specific requirements for providing notice of public meetings are set forth in federal, state and local regulations, and must be followed. FTA does not intend to alter any of those regulations with this Circular. The intent of Chapter III is to provide suggestions for additional methods for engaging EJ populations.

F. Chapter IV—Integrating Principles of Environmental Justice in Transportation Planning and Service Delivery

This chapter includes guidance on incorporating EJ principles into Statewide, metropolitan and local planning processes. Many of the strategies described in this chapter apply not only to the required Statewide and metropolitan planning processes, but also to planning activities undertaken by transit providers and other local entities with public transportation planning and service-delivery responsibilities. This chapter builds on the residential demographic profile described in Chapter II and describes specific planning tools for developing these profiles. The chapter briefly outlines the Statewide and metropolitan planning public engagement requirements in the joint FHWA/FTA planning regulations, and proposes strategies to achieve public participation in planning activities. Each plan, whether Statewide, metropolitan, or local, should encompass the goals and visions for future transportation for a region or area. This chapter explains why it is important to develop those goals and visions with input from EJ populations.

This chapter provides some sample questions to guide the discussion with the public to inform planning officials on how well current operation, management, and maintenance of facilities and services serve the needs of communities, with particular attention to the parity between EJ and non-EJ populations. In response to comments, references to service and fare equity have been moved to the Title VI Circular. This chapter recommends that public transportation providers and planning officials maintain a regular and open dialogue with EJ populations regarding the effectiveness of the plan, and identify trends in public transportation for future plans.

Commenters expressed interest in FTA providing more EJ guidance for MPOs and planning activities. One commenter pointed out that part of this chapter seemed repetitive of other chapters, while another suggested the creation of additional regulations and requirements that are sensitive to performance-based planning. Multiple commenters suggested linking the requirement to consider the needs of EJ populations with planning certification reviews, while several other commenters suggested flexibility as to when environmental justice should be considered for long term assessments. FTA revised the Circular to incorporate these suggestions.

G. Chapter V—Incorporating Environmental Justice Principles Into the NEPA Process

This chapter provides recipients with a road map for incorporating EJ analysis into the National Environmental Policy Act (NEPA) process. Federal agencies are required to consider the effects of Federally-funded projects on the environment. Recipients should include an EJ analysis, where applicable, as part of their NEPA documentation.

This chapter describes how a recipient can incorporate EJ principles into its analysis of the environmental impacts of a proposed project by defining the project impact area, identifying alternatives, identifying adverse environmental effects, identifying project benefits, and identifying mitigation measures and enhancements. Finally, this chapter provides guidance related to projects that qualify as categorical exclusions and information related to NEPA-specific public engagement strategies.

Several commenters spoke positively of Chapter V. Some commenters made recommendations, including incorporating CEQ's definition of cumulative impacts into guidance; allowing stronger state-level analyses to suffice; and removing the chapter altogether. Multiple commenters wanted more discussion and clarification on categorical exclusions, including when further evaluation for an exclusion or exemption needs to be conducted. Commenters also wanted to clarify that projects are not always evaluated through the NEPA process. FTA acknowledges that Chapter V does not serve as guidance on the NEPA process, but rather assumes the reader has a level of familiarity with NEPA and its requirements. Therefore, FTA declines to incorporate into Chapter V discussions of general NEPA concepts such as cumulative impacts under CEQ. However, FTA has revised Chapter V to provide additional clarification of the relationship between NEPA and EJ.

Issued in Washington, DC, this July 12, 2012.

Peter M. Rogoff,

Administrator.

[FR Doc. 2012–17404 Filed 7–16–12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0080]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel AVENIR; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 16, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0080. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AVENIR is:

INTENDED COMMERCIAL USE OF VESSEL: ''Sunset harbor cruises with a master captain. Showing tourists and residents great views of the city, and giving them a sailing experience.''

GEOGRAPHIC REGION: ''California, Hawaii.''

The complete application is given in DOT docket MARAD–2012–0080 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: July 9, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–17350 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012 0079]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel GUILDING LIGHT; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 16, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0079. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GUILDING LIGHT is:

Intended Commercial Use of Vessel: ''Day charters and week long charters with me aboard as the captain.''

Geographic Region: ''Puerto Rico, Texas, Florida, Georgia, North Carolina, Hawaii, Washington, New York, Connecticut, Rhode Island, Massachusetts, Maine.''

The complete application is given in DOT docket MARAD–2012–0079 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: July 9, 2012.

Julie P. Agarwal,

Secretary,

Maritime Administration.

[FR Doc. 2012–17352 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–81–P

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

Agency: United States Institute of Peace.

Date/Time: Thursday, July 19, 2012 (8:30 a.m.–4:00 p.m.).

Location: 2301 Constitution Avenue NW., Washington, DC 20037.

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: July 19, 2012 Board Meeting; Approval of Minutes of the One Hundred Forty-Third Meeting (April 26, 2012) of the Board of Directors; Chairman's Report; President's Report; Update on Management, Budget and Congress; Update on USIP Work in Syria, Burma & Libya; Board Executive Session; Other General Issues.

Contact: Tessie F. Higgs, Executive Office, Telephone: (202) 429–3836.

Dated: July 6, 2012.

Paul Hughes,

Chief of Staff, United States Institute of Peace.

[FR Doc. 2012–17194 Filed 7–16–12; 8:45 am]

BILLING CODE 6820–AR–M

FEDERAL REGISTER

Vol. 77 Tuesday,

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Part II

Department of Education

34 CFR Parts 674, 682 and 685

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682, and 685

RIN 1840–AD05

[Docket ID ED–2012–OPE–0010]

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Perkins Loan (Perkins Loan) program, Federal Family Education Loan (FFEL) program, and William D. Ford Federal Direct Loan (Direct Loan) program regulations. The proposed regulations would implement a new Income Contingent Repayment (ICR) plan in the Direct Loan program based on the President's ''Pay As You Earn'' repayment initiative, incorporate recent statutory changes to the Income Based Repayment (IBR) plan in the Direct Loan and FFEL programs, and streamline and add clarity to the total and permanent disability discharge process for borrowers in the title IV, HEA loan programs. The proposed regulations implementing a new ICR Plan and the statutory changes to the IBR plan would assist borrowers in repaying their loans while the proposed changes to the total and permanent disability discharge process would reduce burden for borrowers who are disabled and seeking a discharge of their title IV debt.

DATES: We must receive your comments on or before August 16, 2012.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Jessica Finkel, U.S. Department of Education, 1990 K Street NW., Room 8031, Washington, DC 20006–8502.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jessica Finkel, U.S. Department of Education, 1990 K Street NW., Room 8031, Washington, DC 20006–8502. Telephone: (202) 502–7647 or by email at: *Jessica.Finkel@ed.gov*. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: The combination of increased enrollment and rising tuition has contributed to a significant increase in student loan debt among Americans. The ability of recent college graduates to find immediate employment with wages adequate enough to repay this debt has been challenged.

For Federal student loan borrowers who suffer from a total and permanent disability (TPD), the Department's current disability discharge process has led to inconsistencies in determining their eligibility for discharge and created undue hardship.

Based on the results of the negotiated rulemaking process and the advice and recommendations submitted by individuals and organizations in public hearing testimony and in written comments submitted to the Department, the proposed regulations would create a new Income Contingent Repayment (ICR) plan in the Direct Loan program based on the President's ''Pay As You Earn'' repayment initiative, incorporate recent statutory changes to the Income Based Repayment (IBR) plan in the Direct Loan and FFEL programs, and streamline and add clarity to the total and permanent disability discharge process for borrowers in the title IV, HEA loan programs.

Summary of the Major Provisions of This Regulation: Action: The NPRM proposes regulations that would—

• Create a new ICR plan (proposed ICR–A) in the Direct Loan program based on the President's Pay As You Earn repayment initiative. The proposed regulations support the administration's goal of making the statutory improvements made by the SAFRA Act included in the Health Care and Reconciliation Act of 2010 (Pub. L. 111–152) to the IBR plan available to some borrowers earlier than July 1, 2014, and make technical corrections and minor changes to the current ICR plan regulations, including the addition of provisions related to notification of income documentation requirements and the ICR loan forgiveness process.

• Incorporate statutory changes to the IBR plan that were made by the SAFRA Act and add new provisions related to notification of income documentation requirements, repayment options after leaving the IBR plan, and the IBR loan forgiveness process.

• Revise Perkins Loan and FFEL program regulations to permit borrowers to apply directly to the Department for a total and permanent disability discharge. In the Direct Loan program, borrowers would continue to apply directly to the Department for total and permanent disability discharges, as they do under the current Direct Loan regulations.

• Modify regulations in the Perkins Loan, FFEL, and Direct Loan programs to provide more detailed information to borrowers in letters explaining why a disability discharge has been denied.

• Define the term ''borrower's representative'' for purposes of the disability discharge application process and state that references to a borrower or a veteran in the total and permanent disability discharge regulations include a borrower's representative or a veteran's representative.

• Specify that the Department denies a disability discharge request and collection resumes on the borrower's loans if the borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's disability discharge application and before the date the Department makes a decision on the borrower's application for a total and permanent disability discharge.

• Specify that, if a borrower's Perkins Loan, FFEL, or Direct Loan program loan is reinstated, it returns to the status that would have existed if the total and permanent disability discharge application had not been received.

• Make corresponding changes to the total and permanent disability application process based on a certification from the Department of Veterans Affairs.

Please refer to the *Significant Proposed Regulations* section of this preamble for a fuller discussion of the major provisions contained in this NPRM.

Chart 1 summarizes the proposed regulations and related benefits, costs, and transfers that are discussed in more detail in the *Regulatory Impact Analysis* of this preamble. The Department estimates that approximately 1.6 million borrowers could take advantage of the proposed ICR–A repayment plan with another million borrowers being affected by the statutory changes to the IBR plan reflected in the proposed regulations. Significant benefits of these proposed regulations include a streamlined process for total and permanent disability discharges, enhanced notifications related to TPD, IBR, and ICR application and servicing processes, and reduced monthly payments for borrowers in partial financial hardship (PFH) status as a result of using a lower PFH threshold of 10 percent. The net budget impact of the proposed regulations is $2.1 billion over the 2012 to 2021 loan cohorts.

CHART 1—SUMMARY OF THE PROPOSED REGULATIONS

Issue and key features	Benefits	Cost/transfers
Income Contingent Repayment (34 CFR part 685)		
Establishes ICR–A repayment plan with features of IBR as revised by SAFRA for new borrowers on or after 10/1/2007 with a loan disbursement made on or after 10/1/2011. ICR–A retains a cap on interest capitalization from current ICR.	Enhanced cash management option for borrowers.	Estimated net budget impact of $2.1 billion over the 2012–2021 loan cohorts.
Establishes threshold for PFH at 10% for ICR–A borrowers	Reduced payments and shorter forgiveness period may encourage acknowledgement and payment of debt.	
Loan forgiveness after 20 years of qualifying payments compared to 25 years under current regulations.	Reduced monthly payments may allow greater participation in the economy.	
Retains current ICR program as ICR–B	ICR–B leaves an income driven repayment option available to all borrowers.	
Establishes process for borrower notification and processing of loan forgiveness by loan holders.		
Income Based Repayment (34 CFR part 685)		
Incorporates statutory changes from SAFRA	Benefits mirror those associated with proposed ICR changes.	
Threshold for PFH reduced from 15% to 10% for new borrowers after 7/1/2014.		
Loan forgiveness after 20 years of qualifying payments compared to 25 years under current regulations.		
Income Based Repayment (34 CFR part 685, 34 CFR part 682)		
A smaller payment amount made under a forbearance can qualify as the single payment made in standard repayment plan for borrower leaving IBR to select another repayment plan.	Improved notifications around annual recertification of income may reduce number of borrowers removed from PFH for paperwork reasons.	No net budget impact from proposed regulations.
Modified notification and income documentation requirements for borrowers in IBR.	....	Estimated paperwork compliance costs of approximately $570,000 annually.
Establishes process for borrower notification and processing of loan forgiveness by loan holders.		
Total and Permanent Disability (34 CFR 674.61; 34 CFR 682.402; 34 CFR 685.213)		
Creates single discharge application process through the Department for all of a borrower's FFEL, Direct Loans, and Perkins loans.	Simplifies process for borrowers ...	Estimated paperwork compliance burden of approximately $725,000.
Specifies that borrower's representative will receive all notifications and can be involved in all aspects of the process.	Departmental processing should increase consistency of TPD determinations.	
Enhanced notifications, including more detailed reasons for denials and information about options for reapplying.	Process changes could reduce reinstatements for paperwork reasons.	
Revised treatment of payments made following a TPD discharge.		
Creation of standard form for reporting income during 3-year post-discharge monitoring period.		

Invitation To Comment: As outlined in the Negotiated Rulemaking section of this notice, significant public participation, through three public hearings and three negotiated rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person, in Room 8031, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Negotiated Rulemaking

Section 492 of the Higher Education Act of 1965, as amended, requires the Secretary, before publishing any proposed regulations for programs authorized by title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must establish a negotiated rulemaking committee and subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html.*

On May 5, 2011, the Department published a notice in the **Federal Register** (76 FR 25650) announcing our intent to establish up to two negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to streamlining institutional reporting requirements and proposed regulations regarding better State identification of low-performing teacher preparation programs pursuant to sections 205 and 207 of the HEA through focusing reporting on improved measures of program quality. A second committee (the ''Loans Committee'') would address Federal student loan issues. The regulations considered by the second committee would: Implement changes made by the SAFRA Act (Pub. L. 111–152), which ended the making of new loans in the Federal Family Educational Loan (FFEL) program as of July 1, 2010; make improvements to the income-contingent and income-based repayment plans; and improve the process for consideration of applications for total and permanent disability discharges. The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee.

The Department developed a list of proposed regulatory provisions from advice and recommendations submitted by individuals and organizations in testimony submitted to the Department in a series of three public hearings and a roundtable discussion held on:

- May 12, 2011, at Tennessee State University, Nashville, Tennessee.
- May 16, 2011, at Pacific Lutheran University, Tacoma, Washington.
- May 19, 2011, at Loyola University-Lakeshore Campus, Chicago, Illinois.
- May 26, 2011, at College of Charleston, Charleston, South Carolina.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. Transcripts of the regional meetings can be accessed at *www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html* and is also accessible in the rulemaking docket on *www.regulations.gov.*

Staff within the Department also identified issues for discussion and negotiation.

The Loans Committee included the following members:

- Mr. Getachew Kassa, Legislative Director, United States Student Association and Mr. Abou Amara, Jr. (alternate), President, Graduate and Professional Student Association, University of Minnesota, Twin Cities.
- Ms. Deanne Loonin, National Consumer Law Center, and Ms. Radhika Miller (alternate), Program Manager, Educational Debt Relief and Outreach, Equal Justice Works.
- Ms. Jennifer Mishory, Deputy Director, Young Invincibles, and Ms. Maureen Thompson (alternate), The Hastings Group, LLC.
- Ms. Margaret Rodriguez, Senior Associate Director of Financial Aid, University of Michigan and Chair, National Direct Student Loan Coalition, and Ms. Elizabeth Hicks (alternate), Executive Director Student Financial Services, Massachusetts Institute of Technology.
- Mr. David Glezerman, Assistant Vice President and University Bursar, Temple University, and Ms. Maria Livolsi (alternate), Student Loan Service Center, State University of New York.
- Mr. Robert Perrin, President, Williams & Fudge, Inc.
- Mr. Todd Leatherman, Executive Director, Office of Consumer Protection, Office of the Kentucky Attorney General, and Ms. Michele Casey (alternate), Assistant Attorney General, Consumer Fraud Bureau Office of the Illinois Attorney General.
- Ms. Cristi Millard, Director of Financial Aid, Salt Lake Community College, and Mr. Chris Christensen, (alternate) Director of Financial Aid, Johnson County Community College, Kansas.
- Ms. Kris Wright, Director, Office of Student Finance, University of Minnesota and Executive Council Member and Secretary, National Direct Student Loan Coalition, and Ms. Elaine Papas-Varas (alternate), University Director of Student Financial Aid and Director of the Primary Care Practitioner Loan Redemption Program of New Jersey University of Medicine and Dentistry of New Jersey.
- Ms. Yvonne Gutierrez-Sandoval, Senior Associate Director of Financial Aid, Pitzer College, and Mr. Jeffrey A. Gall (alternate), Associate Dean, Office of Student Financial Services, Georgetown University.
- Mr. Tom Sakos, Director of Student Lending and Regulatory Quality

Assurance, DeVry Inc., and Mr. Anthony Fragomeni (alternate), Director of Governmental Affairs, Empire Education Group and Chairman, American Association of Cosmetology Schools' Government Relations Team.

- Ms. Betsy Mayotte, Director, Regulatory Compliance and Privacy, American Student Assistance, and Mr. Scott Giles (alternate), Vice President for Operations, Social Marketing and Strategy, Vermont Student Assistance Corporation.
- Mr. Robert Sandlin, Director of Policy and Compliance, Higher Education Servicing Corporation, and Ms. Vicki Shipley (alternate), Senior Advisor, National Council of Higher Education Loan Programs.
- Mr. Albert Gray, Executive Director and CEO, Accrediting Council for Independent Colleges and Schools, and Ms. Sharon Tanner (alternate), CEO, National League for Nursing Accreditation.
- Ms. Pamela Moran and Ms. Gail McLarnon, U.S. Department of Education.

The Loans Committee met to develop proposed regulations during the months of January, February, and March of 2012. These proposed regulations reflect the work of this second committee and proposes regulations relating to the administration of the Federal student loan programs, specifically changes governing the ICR and IBR plans, and the process for making TPD discharge determinations. These proposed regulations also include certain technical changes to the regulations that are needed to reflect recent amendments to the HEA and to correct certain technical errors. These types of changes are not normally subject to the statutory requirements for negotiated rulemaking and public notice and comment. However, since those changes affected the regulations that would be considered by the negotiated rulemaking committee, the Secretary chose to include those changes in the proposed regulations to be considered by the committee to ensure that the committee could evaluate the full scope of changes to those regulations.

At its first meeting, the Loans Committee reached agreement on its protocols and proposed agenda. The Committee's protocols provided that, unless agreed to otherwise, for the committee to be considered to have reached consensus on the regulations, consensus must be reached on all of the proposed regulations. Consensus means that there must be no dissent by any member in order for the Committee to be considered to have reached agreement.

During its first meeting, the Loans Committee agreed to negotiate an agenda of 25 student loan related issues. The most significant issues: Developing regulations necessary to implement the President's ''Pay As You Earn'' repayment initiative; developing regulations to incorporate statutory changes in the Income-Based Repayment Plan (IBR) and to address certain problems in the administration of the IBR and Income-Contingent Repayment plans; to overhaul the total and permanent disability discharge process; to update the FFEL program regulations to eliminate obsolete and unnecessary provisions governing loan origination and disbursement; to revise the Direct Loan program regulations to eliminate cross reference to the FFEL program regulations; to revise regulations governing the determination of a defaulted borrower's reasonable and affordable payment amount for purposes of rehabilitation of the borrower's defaulted loan; to revise the regulations governing administrative wage garnishment (AWG) for defaulted borrowers in the FFEL program; and to provide for consistent treatment of borrowers requesting forbearance on or after the 270th day of delinquency. The Department stated its commitment to publishing the regulations to implement the Pay As You Earn repayment initiative and to overhaul and improve the total and permanent disability discharge process for borrowers as soon as possible.

During the development of proposed regulatory language and prior to the second meeting of the Committee, the Department concluded that the scope and volume of the likely resulting proposed regulations resulting from the agenda approved by the Committee would require extensive and significant changes to regulations. In particular, updating the FFEL program regulations and major changes to the Direct Loan regulations involved making changes to the entirety of those program regulations. The Department determined that it was unlikely that one NPRM reflecting all of the issues could be published by the deadline established by section 482(c) of the HEA. To ensure the earliest possible implementation of the Pay As You Earn repayment initiative and the revised total and permanent disability discharge regulations, which will provide significant benefits to student loan borrowers, the Department determined that two NPRMs would result from the Committee's work.

During the second meeting of the Committee, the Department explained to the Committee members that one NPRM would contain proposed regulations to implement the Pay As You Earn repayment initiative, to incorporate statutory changes in the IBR plan, to make other changes to improve the administration of the IBR and ICR plans, and to overhaul the total and permanent disability discharge process. The second NPRM would contain all the remaining proposed regulations that were on the Committee's agenda, including proposed regulations involving rehabilitation of defaulted loans and AWG in the FFEL program. The Department also explained that any final regulations published as a result of the second NPRM would not be published by November 1, 2012, and therefore would not become effective until July 1, 2014, under the master calendar provisions of section 482(c)(1) the HEA. The Department committed, however, to authorize, to the extent possible, early implementation of the final regulations published as a result of the second NPRM under the Secretary's authority to designate regulatory provisions for early implementation by program participants under section 482(c)(2) of the HEA.

At the final meeting in March 2012, the Loans Committee reached consensus on the full agenda of loans issues. This document represents the first of two NPRMs resulting from the Committee's negotiations. It contains proposed regulations to: Implement the Pay As You Earn repayment initiative; incorporate statutory changes in the IBR plan; make certain improvements in the administration of the IBR and ICR plans; and overhauling the total and permanent disability discharge process.

More information on the work of the Loans Committee can be found at: *www.ed.gov/policy/highered/reg/hearulemaking/2008/loans.html.*

Summary of Proposed Changes

Income Contingent Repayment

The proposed regulations create a new ICR plan (proposed ICR–A) based on the President's Pay As You Earn repayment initiative and proposes to make technical corrections and other minor changes to the current ICR plan (proposed ICR–B). The proposed changes to ICR–B include the addition of provisions related to notification of income documentation requirements and the ICR loan forgiveness process.

Under the proposed regulations, ICR–A would be available to a new borrower who: (1) Did not have an outstanding student loan as of October 1, 2007, or as of the date he or she received a new loan after October 1, 2007; and (2) received a disbursement of a Direct

Subsidized Loan, a Direct Unsubsidized Loan or a student Direct PLUS Loan on or after October 1, 2011, or receives a Direct Consolidation Loan based on an application received on or after October 1, 2011, except if the Direct Consolidation Loan repays a Direct or FFEL loan made before October 1, 2007. The proposed regulations for the ICR–A program would incorporate the following provisions from the statutory amendments to IBR that become effective on July 1, 2014:

• A borrower's maximum annual payment amount under the ICR–A plan would be capped at 10 percent of the difference between the borrower's AGI and 150 percent of the annual poverty guideline amount for the borrower's State and family size.

• Borrowers who repay under the ICR–A plan would qualify for forgiveness of any remaining loan balance after 20 years of qualifying payments and periods of economic hardship deferment.

• To qualify for the ICR–A plan and to continue to make income-contingent payments under that plan, a borrower would be required to have a partial financial hardship. A borrower would be considered to have a partial financial hardship if the annual amount due on all of the borrower's eligible Direct Loan and FFEL Program loans, as calculated based on a standard repayment plan with a 10-year repayment period, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the annual poverty guideline amount for the borrower's State and family size.

• For married borrowers who file a joint Federal tax return, the determination of a borrower's partial financial hardship status would be based on the combined income of both spouses and, if the spouse also has eligible loans, the combined eligible loan debt of both individuals. For a married borrower who files an individual Federal tax return, only the borrower's income and loan debt would be considered.

• The ICR–A plan will be available to any borrower who is repaying a non-defaulted Direct Loan, except for a parent Direct PLUS loan or a Direct Consolidation loan that repaid a parent Direct or FFEL PLUS loan. As with IBR, parent Direct PLUS Loans and Direct Consolidation Loans that repaid parent Direct PLUS Loans or parent Federal PLUS Loans would not be eligible for repayment under the ICR–A plan.

• Unpaid accrued interest would be capitalized only if a borrower repaying under the ICR–A plan is determined to no longer have a partial financial hardship, or if the borrower chooses to leave the ICR–A plan.

• For a borrower whose scheduled payment under the ICR–A plan is less than the amount of interest that accrues each month, the Secretary would pay the remaining interest for a period of three consecutive years from the date the borrower begins repayment under the ICR–A plan, excluding periods of economic hardship deferment.

A Direct Loan borrower who is not a parent Direct PLUS borrower will continue to be able to select the ICR–B plan as one of the available repayment plans. These proposed regulations also incorporate the proposed IBR regulations regarding the treatment of married borrowers and borrowers who fail to provide required documentation of income into the current ICR/ICR–B regulations.

Income Based Repayment

The proposed regulations incorporate statutory changes to the IBR plan that were included in the SAFRA Act and add new provisions related to notification of income documentation requirements, repayment options after leaving the IBR plan, and the IBR loan forgiveness process.

SAFRA changes:

Proposed § 685.221(a)(4) would reflect the statutory definition of ''new borrower'' for purposes of the changes to the IBR program as an individual who has no outstanding balance on a Direct Loan or a FFEL program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014.

The proposed regulations would revise the definition of ''partial financial hardship'' in § 685.221(a)(5) to reflect the statutory provision and state that for new borrowers after July 1, 2014, a borrower is considered to have a partial financial hardship if the annual amount due on all of the borrower's eligible Direct Loan and FFEL Program loans, as calculated based on a standard repayment plan with a 10-year repayment period, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the annual poverty guideline amount for the borrower's family size. The proposed regulations would revise § 685.221(b)(1) to provide that for a new borrower after July 1, 2014, the maximum IBR monthly payment amount during periods of partial financial hardship may not exceed 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline amount for the borrower's family size, divided by 12.

Finally, the proposed regulations would revise § 685.221(f) to provide that a new borrower who has participated in the IBR plan qualifies for loan forgiveness after 20 years of qualifying payments and periods of economic hardship deferment.

Provisions that affect all IBR participants:

The proposed IBR regulations would also:

• Revise the partial financial hardship (PFH) determination process and modify notification, income documentation requirements, rights and responsibilities of borrowers who have been found qualified for IBR.

• Improve notifications requirements for borrowers who are eligible or approaching eligibility for loan forgiveness.

• Revise payment requirements for borrowers who leave IBR. A borrower who leaves the IBR plan and is placed on the standard repayment plan may change to a different repayment plan after making one monthly payment under the standard repayment plan. Under the proposed regulations, the single payment made under the standard repayment plan could include a smaller payment amount paid under a reduced payment forbearance agreement with the loan holder or the Secretary.

Total and Permanent Disability Discharge

The proposed regulations will revise Perkins and FFEL regulations to provide for direct application to the Department for total and permanent disability discharges. They will modify regulations in the Perkins, FFEL, and Direct Loan program to provide more detailed information to borrowers in the letters explaining decisions to deny discharge applications and the proposed regulations would modify the Perkins, FFEL, and Direct Loan regulations to specify that the Department will collect income documentation from borrowers during the post-discharge monitoring period on an OMB-approved form.

The proposed total and permanent disability regulations would:

• Revise certain provisions to specify that a borrower's representative may be involved in any part of the total and permanent disability total and permanent disability process and must receive all notifications sent to the borrower.

• Extend the loan suspension window to 120 days from 60 days after a borrower has notified the loan holder(s) of his or her intent to apply for a discharge.

• Extend the deadline to submit an application for total and permanent disability to 90 days after the date of the physician's certification that a borrower has a total and permanent disability.

• Revise the total and permanent disability discharge application process so that a borrower applies for total and permanent disability directly to the Department and that the Department directly notifies the borrower's Perkins and FFEL lenders upon approval of the application for total and permanent disability discharge.

• Revise provisions related to a borrower's responsibilities to report income annually after a discharge has been granted and specify that the Department will create an OMB approved form for reporting earnings during the monitoring period.

• Revise provisions to require that payments made by the borrower after a disability discharge has been granted are returned to the borrower.

• Revise the application process by streamlining the approval process where the borrower's documentation is for applications from the Department of Veterans Affairs to ensure consistency.

• Update the regulations governing the actions of FFEL lender and guaranty agencies in the disability discharge process to reflect the new single application process.

• Propose regulations to specify that if the borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application and before the date the Secretary grants a total and permanent disability discharge, the Secretary will deny the borrower disability discharge application and resume collection on the borrower's loans.

• Revise provisions to require that the loans of a borrower who is denied a total and permanent disability discharge are reinstated as if the total and permanent disability application was never submitted.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Total and Permanent Disability Discharge (34 CFR 674.61, 682.402, and 685.213)

Background: After receiving significant public criticism in February 2011 that the Department's total and permanent disability discharge process lacked transparency and was unduly burdensome and costly for borrowers, the Department undertook a comprehensive review of the process. Before initiating this review, the Department had already begun making improvements such as: Streamlining the review process to ensure that the physician's certification received primary consideration in discharge decisions, performing outreach to borrowers to ensure that supplemental information from physicians is received timely, and improving information flow to help borrowers understand the process. We made other improvements when the Department designated a single contractor to manage the total and permanent disability discharge process in 2012, including the creation of a new Web site through which borrowers can track the status of their applications, clearer correspondence with borrowers, and borrower notifications at regular milestones as the application process progresses.

As a result of the comprehensive review and ongoing efforts to identify procedural deficiencies, the Department also committed to considering changes to the regulations governing the total and permanent disability discharge process. In the **Federal Register** notice published on October 28, 2011 (76 FR 66880), announcing our intent to establish a negotiated rulemaking committee on the Federal student loan programs, we included three topics for discussion related to loan discharges based on total and permanent disability:

• Establishing a single total and permanent disability application process;

• Improvements to borrower notification of denial; and

• Improvements in post-discharge monitoring of employment earnings.

These proposed regulations would revise §§ 674.61, 682.402(c), and 685.213 to require Perkins Loan and FFEL borrowers to apply directly to the Department for a total and permanent disability discharge and to provide increased transparency in the notifications a Perkins Loan, FFEL, and Direct Loan borrower receives when an application for discharge is denied. Finally, after discussions with the non-Federal negotiators, the Department committed to the development of a new Federal form that would assist borrowers in providing the Department with documentation of the borrower's annual earnings from employment during the three-year post-discharge monitoring period. The sections that follow describe in more detail these changes and other clarifying changes made by the Loans Committee to improve the total and permanent disability process.

Use of Terms (34 CFR 674.61(b)(1), 682.402(c)(1), and 685.213(a)(4))

Statute: Section 437(a)(1) of the HEA, which is applicable to the Direct Loan Program under section 455(a)(1) of the HEA, and section 464(c)(1)(F) of the HEA provide for a discharge of a borrower's FFEL, Perkins Loan, or Direct Loan program loan if the borrower becomes totally and permanently disabled as determined in accordance with the Secretary's regulations, or if the borrower is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than 60 months.

Current Regulations: Section 682.402(c)(2) of the FFEL program regulations authorize a borrower's representative to submit a total and permanent disability discharge application on behalf of a borrower. Sections 674.61(b)(6), 682.402(c)(6), and 685.213(b)(5) of the Perkins Loan, FFEL, and Direct Loan program regulations, respectively, provide that the borrower's representative may assume the borrower's responsibilities to provide notifications to the Secretary about address changes and annual earnings after the borrower has received a discharge based on total and permanent disability. However, current regulations do not define the term ''borrower's representative.''

Section 682.402(c) of the FFEL program regulations use the terms ''lender'' and ''guaranty agency,'' as those terms are defined in 682.200(b).

Proposed Regulations: The proposed regulations would add new §§ 674.61(b)(1)(ii), 682.402(c)(1)(iv)(A), and 685.213(a)(4) to the Perkins Loan, FFEL, and Direct Loan program regulations and specify that a ''borrower's representative'' or a ''veteran's representative'' is any individual, including a member of the borrower's or veteran's family or an attorney, authorized to act on behalf of the borrower or the veteran with respect to the borrower's or veteran's application for a total and permanent disability discharge. Under the proposed regulations, references to a ''borrower'' or a ''veteran'' in the total and permanent disability discharge regulations would include a borrower's representative or a veteran's representative. The proposed regulations would clarify that a representative may act on behalf of the borrower to apply for a discharge, provide notifications or information to the Secretary in connection with a discharge application, and to receive notifications from the Secretary.

The proposed regulations would add a new § 682.402(c)(1)(iv)(B) to the FFEL regulations to clarify that for purposes of the FFEL total and permanent disability discharge regulations, the term ''lender'' would include a guaranty agency that holds a borrower's FFEL loan at the time the borrower applies for a total and permanent disability discharge. This proposed change would reflect current practice. Currently, if the guaranty agency is the loan holder at the time the borrower requests a total and permanent disability discharge, the guaranty agency carries out the responsibilities of a FFEL lender with regard to the borrower's discharge request (except for claim filing requirements).

The proposed regulations would add a new § 682.402(c)(1)(iv)(C) to the FFEL regulations to clarify that references in the total and permanent disability discharge regulations to ''the applicable guaranty agency'' refer to the guaranty agency that guaranteed the loan.

Reasons: The current regulations specifically allow a borrower's representative to submit a total and permanent disability discharge application on behalf of the borrower only in the FFEL program. While discussing the role of the borrower's representative in helping a borrower apply for discharge of a FFEL loan based on a total and permanent disability, a non-Federal negotiator requested that the regulations be amended to clarify that a borrower's representative may represent the borrower throughout the process, not just during the initial application stage. Currently, as a matter of practice, the Department allows representatives to represent borrowers throughout the total and permanent disability discharge process in all of the title IV loan programs. However, a non-Federal negotiator argued that the practice is not consistently followed by loan servicers and others participating in the title IV loan programs and should be formalized by including it in the regulations. The non-Federal negotiator was particularly concerned that borrowers' representatives do not always receive the notifications that the borrower receives. The non-Federal negotiator requested that the regulations be amended to specify that both the borrower and the borrower's representative (if any) receive notices.

The Department agreed and, for consistency, added a paragraph to the proposed regulations for all of the title IV student loan programs stating that the term ''borrower'' includes a borrower's representative, if applicable. Under the proposed regulations any notice sent to a borrower must also be sent to the borrower's representative if the borrower has one. In addition, both the borrower and the borrower's representative may provide notifications and information in connection with the borrower's total and permanent disability discharge.

The Department also agreed to develop a new release form that the borrower can use to designate a representative to act on behalf of the borrower with respect to the borrower's request for a disability discharge.

The non-Federal negotiator also requested that the Department add language to the proposed regulations specifying that a borrower's representative could be an attorney. The Department agreed and added language to the Perkins Loan, FFEL, and Direct Loan program proposed regulations providing that an attorney could be a borrower's representative.

Other non-Federal negotiators requested that the proposed regulations clarify the role of a guaranty agency that holds a borrower's FFEL loan at the time the borrower applies for a total and permanent disability discharge. Under current practice, the guaranty agency carries out the functions of a FFEL lender with regard to the borrower's discharge request. The Department proposes to reflect this practice by adding a provision to the regulations specifying that the term ''lender,'' as used in the FFEL program disability discharge regulations, means a guaranty agency if the guaranty agency holds the loan at the time the borrower applies for a total and permanent disability discharge.

The current total and permanent disability discharge regulations do not specifically address borrowers with FFEL program loans held by more than one lender and possibly guaranteed by more than one guaranty agency. The proposed regulations, as discussed in the next section, would specifically address how discharge applications from these borrowers will be handled. Therefore, the proposed regulations use the term ''the applicable guaranty agency.'' Some non-Federal negotiators recommended that the proposed regulations specify that the term ''applicable guaranty agency'' means the guaranty agency that guaranteed the FFEL loan for which the borrower has requested a discharge. The Department agreed that this change would improve the clarity of the proposed regulations.

Total and Permanent Disability Discharge Application Process (34 CFR 674.61(b)(2), 682.402(c)(2), and 685.213(b))

Statute: The HEA does not specify the application process for a borrower applying for a total and permanent disability discharge.

Current Regulations: Currently, a borrower who has title IV loans held by two or more lenders must apply separately to each lender for a total and permanent disability discharge. The borrower must provide a total and permanent disability discharge application certified by a physician to each lender that holds title IV loans owed by the borrower. After the application is received, the title IV lender suspends collection activity on the borrower's Perkins Loan, FFEL, or Direct Loan program loans, in accordance with §§ 674.61(b)(2)(iv), 682.402(c)(7)(i), or 685.213(b)(1). Each loan holder processes the disability discharge application separately.

Under § 674.61(b)(2)(iv)(A) of the Perkins Loan program regulations, the institution that awarded the Perkins Loan reviews the borrower's disability discharge application. If the institution determines that the application supports the conclusion that the borrower is totally and permanently disabled, the institution assigns the loan to the Secretary.

Under § 682.402(c)(7)(ii) of the FFEL regulations, the FFEL program lender reviews the borrower's disability discharge application. If the lender determines that the application supports the conclusion that the borrower is totally and permanently disabled, the lender files a disability discharge claim with the guaranty agency. The guaranty agency reviews the application and, if it concurs with the lender's determination, approves the discharge claim in accordance with § 682.402(c)(7)(iv). After approving the claim, the guaranty agency assigns the loan to the Secretary in accordance with § 682.402(c)(7)(vi)(A).

Under § 685.213(b)(1) of the Direct Loan regulations, the borrower applies directly to the Secretary for a total and permanent disability discharge.

Under §§ 674.61(b)(3), 682.402(c)(3), and 685.213(b)(2), the Secretary makes the final determination of eligibility for a total and permanent disability discharge in the Perkins Loan, FFEL, and Direct Loan Programs.

Proposed Regulations: The proposed regulations would revise §§ 674.61(b)(2) and 682.402(c)(2) of the Perkins Loan and FFEL program regulations to have borrowers submit applications for total and permanent disability discharges directly to the Secretary. In the Direct Loan Program, borrowers would continue to submit applications directly to the Secretary.

Under the proposed single application process for total and permanent disability discharges, if a borrower notifies a Perkins loan school or a FFEL program lender that holds his or her loan and claims to be totally and permanently disabled, the school or lender would direct the borrower to notify the Secretary of the borrower's intent to apply for a discharge and would provide the borrower with the information necessary to do so.

Under proposed §§ 674.61(b)(2)(ii) and 682.402(c)(2)(ii), after a Perkins Loan or FFEL borrower notifies the Secretary of his or her intent to apply for a total and permanent disability discharge, the Secretary would—

- Provide the borrower with information needed to apply for the discharge;
- Identify all title IV loans owed by the borrower and notify the lenders of those loans of the borrower's intent to apply for the discharge;
- Direct the lenders to suspend collection efforts on those loans for up to 120 days; and
- Inform the borrower that collection will resume on the borrower's title IV loans if the borrower does not submit a total and permanent disability discharge application within 120 days.

The Secretary would carry out the same actions for Direct Loan borrowers who notify the Secretary that the borrower claims to be totally and permanently disabled under proposed § 685.213(b)(1).

Under proposed §§ 674.61(b)(2)(iii) and 682.402(c)(2)(iii) of the Perkins Loan program and FFEL program regulations, Perkins schools and FFEL lenders will resume collection on the borrower's loans if the borrower does not submit the total and permanent disability discharge application within 120 days. The Perkins loan school or FFEL lender would be deemed to have exercised forbearance during the suspension period. In the FFEL program, the lender could capitalize interest that accrued during the suspension period. Under proposed § 682.402(c)(2)(iii), a guaranty agency, even if it is acting as a lender for purposes of a total and permanent disability discharge request, would not be permitted to capitalize accrued interest.

Under proposed §§ 674.61(b)(2)(v) through (b)(2)(viii), 682.402(c)(2)(iv) through (c)(2)(viii), and 685.213(b)(3), a Perkins Loan, FFEL, or Direct Loan borrower must submit the total and permanent disability discharge application to the Secretary. The application must include a certification by a physician who is a doctor of medicine or osteopathy legally authorized to practice in a State, affirming that the borrower is totally and permanently disabled as described in the regulations. The borrower must submit the disability discharge application to the Secretary within 90 days of the date the physician certified the application.

Generally, the 90-day period for submitting the total and permanent disability discharge application would overlap with the 120-day suspension period referenced earlier in this section. The 120-day suspension period would begin on the date the Secretary notifies the borrower's title IV lenders of the borrower's intent to apply for a total and permanent disability discharge. The 90-day period would begin on the date the physician certifies the total and permanent disability application.

After receiving the total and permanent disability discharge application, the Secretary notifies the borrower's title IV loan holders that the Secretary has received the application. This notification would direct the borrower's loan holders either to suspend collection activity or to maintain the suspension of collection activity on the borrower's title IV loans.

If the application is incomplete, the Secretary requests the missing information from the borrower or the physician who certified the application. An application is incomplete if information requested on the application—such as a borrower's signature, a physician's signature, or a physician's license number—is not provided.

Under proposed §§ 674.61(b)(2)(ix) and 682.402(c)(2)(ix) after receiving the discharge application, the Secretary would send a notification to the borrower that would—

- State that the application will be reviewed by the Secretary;
- Inform the borrower of the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the application; and
- Explain the process for the Secretary's review.

The Secretary would send the same notification to Direct Loan borrowers after receipt of the discharge application.

Reasons: Under the Department's proposed regulations, a borrower would submit one total and permanent disability discharge application directly to the Secretary and this would eliminate the need for borrowers to submit separate discharge applications to each of their loan holders.

The Department's proposal eliminates the requirement that each of a borrower's loan holders (and guaranty agencies, in the FFEL program) review the borrower's total and permanent disability discharge application. The proposal eliminates redundant reviews of total and permanent disability discharge applications and reduces administrative burden on lenders and guaranty agencies in the title IV programs.

The Department believes that the streamlined total and permanent disability discharge process would provide many benefits to borrowers. The proposed regulations would—

- Simplify the process for the borrower;
- Establish a single point of contact provided to the borrower in the instructions for submitting his or her application;
- Reduce the length of time needed to process applications;
- Provide more consistency in determinations;
- Provide more uniformity in the communications sent to borrowers throughout the discharge process; and
- Ensure that all of a borrower's title IV loans that are eligible for a total and permanent disability discharge are discharged at the same time, reducing instances of ''straggler'' loans that the borrower may forget to include when applying for a discharge.

The non-Federal negotiators supported the Department's goal to simplify the application process for a total and permanent disability discharge. However, the non-Federal negotiators raised some concerns about the proposed single application process. The negotiated language in these proposed regulations addresses the majority of these concerns.

Under the Department's initial proposal, the first title IV lender that the borrower contacted would suspend collection activity on the borrower's loans for up to 90 days. The Secretary would notify the borrower's other title IV loan holders to suspend collection after the borrower notified the Secretary of his or her intent to apply for a total and permanent disability discharge. Non-Federal negotiators were concerned that beginning the suspension of collection activity on different dates would be confusing for borrowers. They were also concerned that the 90-day suspension period would not be sufficient time for a borrower to obtain the physician certification needed to apply for the discharge. The negotiators stated that it would be preferable for the suspension of collection activity to last for up to 120 days and for it to begin on the same date for all of the borrower's title IV loans. The non-Federal negotiators recommended that the suspension of collection activity not begin on any of the borrower's title IV loans until after the borrower contacted the Secretary. The Department agreed and modified the proposed regulations accordingly.

Some non-Federal negotiators recommended that the suspension of collection activity also include a suspension of payments collected from borrowers through administrative wage garnishment (AWG) and the Treasury Offset Program (TOP). The Department did not agree. Borrowers applying for total and permanent disability discharges are, by definition, unable to engage in substantial gainful activity. Therefore, AWG should not be an issue for these borrowers. With regard to TOP, the Department reiterated its current policy on stopping TOP offsets. The submission of a total and permanent disability discharge application does not, in and of itself, demonstrate that a borrower is eligible for the discharge. Given the administrative effort and timing issues associated with stopping TOP, it may not be in the best interests of the taxpayers or the borrower to suspend TOP based solely on the filing of the discharge application. If a borrower's loan account has been certified for TOP, the Secretary or a guaranty agency is not required to stop TOP offsets while the borrower is preparing to submit the total and permanent disability discharge application or during its review. The Secretary or guaranty agency may, however, stop or reduce TOP offsets during this period if it believes such action is warranted in the borrower's particular circumstances.

If a determination is made that the borrower is eligible for a total and permanent disability discharge, the Secretary or guaranty agency must promptly inactivate TOP offsets on the account. After the borrower's loan is discharged, all payments on the loan received after the date of the physician's certification, including payments obtained through a TOP offset, are refunded to the borrower.

The proposed single application process would be consistent with the Department's current TOP practices. If the borrower's account is not certified in TOP at the time the borrower contacts the Secretary to request a total and permanent disability discharge, the Secretary or guaranty agency would not take steps to initiate TOP during the suspension of collection activity under proposed §§ 674.61(b)(2)(ii)(C), 682.402(c)(2)(ii)(C), and 685.213(b)(1). However, if the account is already certified in TOP at the time the borrower contacts the Department, neither the Department nor the guaranty agency would be required to stop TOP until the Department determines that the borrower is eligible for a total and permanent disability discharge.

Non-Federal negotiators representing guaranty agencies expressed concerns that the proposed changes would limit the role of guaranty agencies in the total and permanent disability discharge process. Under the new process, the guaranty agencies would be notified of a borrower's eligibility for a total and permanent disability discharge but would not receive copies of the borrower's applications or of any accompanying medical documentation. These non-Federal negotiators stated that this lack of information would hinder the agencies' ability to assist borrowers through the discharge process.

The Department declined to modify the proposed regulations to require that guaranty agencies receive copies of the total and permanent disability discharge applications. Under the proposed regulations, guaranty agencies and lenders would not conduct medical reviews of disability discharge applications. Therefore, there is no need for lenders or agencies to receive the applications. The Department believes that a requirement that disability discharge applications be provided to guaranty agencies would be contrary to the goal of streamlining the disability discharge application process. In addition, the Department notes that nothing prevents a borrower from voluntarily providing this documentation to a guaranty agency.

Secretary's Review of Total and Permanent Disability Discharge Applications (34 CFR 674.61(b)(3), 682.402(c)(3), and 685.213(b)(2))

Statute: The HEA does not specify the procedures for the Secretary's review of total and permanent disability discharge applications.

Current Regulations: If the Secretary determines that a title IV borrower qualifies for a total and permanent disability discharge, the Secretary discharges the loan and, in accordance with §§ 674.61(b)(3)(i), 682.402(c)(3)(ii), and 685.213(b)(2)(ii), the Secretary notifies the borrower that the Secretary has approved the total and permanent disability discharge request. The notification explains to the borrower the terms and conditions under which the Secretary will reinstate the discharged loan.

If the Secretary does not approve the total and permanent disability discharge request, the Secretary notifies the borrower that it has denied the disability discharge application and that collection will resume on the borrower's loan, in accordance with §§ 674.61(b)(3)(ii), 682.402(c)(3)(iii), and 685.213(b)(2)(iii).

Proposed Regulations: Under proposed §§ 674.61(b)(3)(iii) and 682.402(c)(3)(iii), if the Secretary determines that the borrower qualifies for a total and permanent disability discharge, the Secretary would notify the borrower's Perkins and FFEL lenders that the Secretary approved the application and would provide the date that the physician certified the total and permanent disability discharge application.

For Perkins Loan borrowers, the Secretary would direct the institution to assign the borrower's Perkins Loans to the Department. Proposed § 674.61(b)(3)(iv) would require the institution to assign the Perkins Loan to the Secretary within 45 days of receiving the notification.

For FFEL borrowers, the Secretary would direct the FFEL lender to submit a disability claim to the applicable guaranty agency.

If the Secretary determines that the borrower does not qualify for a total and permanent disability discharge, the Secretary notifies the borrower and the lender that the Secretary denied the total and permanent disability discharge application under proposed §§ 674.61(b)(3)(vi), 682.402(c)(3)(v), and 685.213(b)(4)(iv). The notification would include—

- The reason or reasons for the denial;
- A statement that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;
- A statement that the lender will notify the borrower of the date the borrower must resume making payments on the loan or, in the case of a Direct Loan, the date that the borrower must resume making payments on the Direct Loan;
- An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification,

additional information that supports the borrower's eligibility for discharge; and

• An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility.

Under proposed §§ 674.61(b)(3)(vii), 682.402(c)(3)(vi), and 685.213(b)(4)(v), if the borrower requests re-evaluation of his or her application or submits a new disability discharge application, the request must include new information regarding the borrower's disabling condition that was not available at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

Reasons: The Department is proposing to change the regulations to reflect its current practice of providing detailed information in the notifications that are sent to borrowers about their disability discharge applications. The proposed regulations are based on letters that are currently available for use for total and permanent disability discharges but that are not used consistently. The Department believes that describing the content of these letters would ensure that the information provided in the notifications is consistent, and would provide more transparency to borrowers regarding the reasons for the denial of their application, as well as information on the options the borrower has to request that the disability discharge request be re-evaluated.

Treatment of Disbursements of Title IV Loans and Receipt of Title IV Loans After the Physician Certification Date (34 CFR 674.61(b)(4), 674.61(b)(5), 682.402(c)(4), 682.402(c)(5), 685.213(b)(3), and 685.213(b)(4))

Statute: Sections 437(a)(1), which is applicable to the Direct Loan program under section 455(a)(1) of the HEA, and section 464(k) of the HEA authorize the Secretary to develop safeguards to prevent fraud and abuse in the discharge of title IV loans due to total and permanent disability.

Current Regulations: Under § 674.61(b)(4), 682.402(c)(4), or 685.213(b)(3) of the Perkins Loan, FEEL, and Direct Loan program regulations, respectively, if a borrower received a title IV loan or a TEACH Grant prior to the date of the physician's certification of the borrower's total and permanent disability discharge application and a disbursement of that loan or grant occurs while the borrower's discharge request is being processed, the processing of the discharge request is suspended, until the borrower returns the full amount of the disbursement.

Proposed Regulations: The proposed regulations do not change the current requirements for disbursements of loans made prior to the date of the physician's certification. The proposed regulations would add new §§ 674.61(b)(5), 682.402(c)(5), and 685.213(b)(6) to specify that if the borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application and before the date the Secretary grants a total and permanent disability discharge, the Secretary will deny the borrower's disability discharge application and collection will resume on the borrower's loans.

Reasons: The current total and permanent disability discharge regulations address late disbursements of loans received prior to a physician's certification of the borrower's disability discharge application and after a discharge has been granted. However, the current regulations do not address a situation in which a borrower receives a disbursement of a new title IV loan or a new TEACH Grant made on or after the date the physician certified the application, but before the date the Secretary discharges the loan. The Department is proposing to provide in the regulations that a borrower is not eligible for a discharge if the borrower receives a new title IV loan or TEACH Grant while the Department is reviewing his or her total and permanent disability discharge application. When a borrower takes out a title IV loan or receives a TEACH Grant, the borrower makes a commitment either to repay the loan or to teach for four years. If a borrower actively seeks a new title IV loan or TEACH Grant shortly after the borrower is certified as totally and permanently disabled by a physician, it raises the question of whether the borrower actually intends to repay the loan or to teach. The proposed regulations would preclude a borrower from receiving a title IV loan or TEACH Grant, only to have the loan or teaching obligation discharged a short time later.

The non-Federal negotiators agreed with this proposed change. However, there was some discussion on how to track receipt of a new title IV loan or TEACH Grant by a borrower. The Department proposed using the disbursement date of a new title IV loan or TEACH Grant to determine receipt and the non-Federal negotiators agreed.

Reinstatement of Loans and Borrower Responsibilities After Discharge (34 CFR 674.61(b)(6), 674.61(b)(7), 682.402(c)(6), 682.402(c)(7), 685.213(b)(7), and 685.213(b)(8))

Statute: Sections 437(a)(1) of the HEA, which is applicable to the Direct Loan program under section 455(a)(1) of the HEA, and section 464(k) of the HEA authorize the Secretary to promulgate regulations to reinstate a borrower's obligation to repay a FFEL, Perkins Loan, or Direct Loan program loan that was discharged due to a disability if, after the discharge, the borrower receives another title IV loan or has earned income in excess of the poverty line, or under other circumstances that the Secretary determines to be necessary.

Current Regulations: Sections 674.61(b)(5), 682.402(c)(5), and 685.213(b)(4) of the current regulations specify that a Perkins Loan, FFEL, or Direct Loan program loan that has been discharged due to a total and permanent disability will be reinstated if, within three years of the date of the discharge, the borrower—

• Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two;

• Receives a new TEACH Grant or a new title IV loan, except for a Consolidation Loan; or

• Fails to return any disbursement the borrower receives after the discharge date of a title IV loan or TEACH Grant received prior to the discharge date.

Under §§ 674.61(b)(6), 682.402(c)(6), and 685.213(b)(5), during the three-year period after the discharge date, a Perkins Loan, FFEL, or Direct Loan borrower must—

• Notify the Secretary of any changes to the borrower's address or phone number;

• Notify the Secretary if the borrower's annual earnings exceed 100 percent of the poverty line for a family of two; and

• Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

Current regulations do not specify a format or process for providing documentation of annual earnings to the Secretary.

Proposed Regulations: The proposed regulations would not change the conditions for reinstating a loan that has been discharged due to a total and permanent disability. However, we are proposing to modify §§ 674.61(b)(6)(ii)(B), 682.402(c)(6)(ii)(B), and 685.213(b)(7)(ii)(B) to provide that, if a borrower's Perkins Loan, FFEL, or Direct Loan program loan is reinstated, it returns to the status it would have had if the total and permanent disability discharge application had not been received. Current regulations do not address the status of a loan that has been reinstated.

The proposed regulations would make one change to the regulations describing the borrower's responsibilities after the borrower has received a total and permanent disability discharge. Under proposed §§ 674.61(b)(7)(iii), 682.402(c)(7)(iii), and 685.213(b)(8)(iii), a Perkins Loan, FFEL, or Direct Loan borrower would be required to provide the Secretary, on request, with documentation of annual earnings from employment on a form provided by the Secretary.

Reasons: Borrowers whose loans have been discharged based on a disability must provide documentation of their income to the Secretary for three years after the date of the discharge. It is the Department's experience that borrowers who are totally and permanently disabled and who have little or no income are often unsure how to document their income.

During the negotiations, the Department initially proposed shifting the three-year period during which the borrower would have to provide income information to three calendar years (January 1 to December 31) after the discharge was granted. The Department proposed this approach because it would allow borrowers to meet the income documentation requirement by submitting tax returns for each calendar year after the discharge.

Non-Federal negotiators objected to this proposal. They noted that it would stretch out the post-discharge review period for borrowers—in some cases to almost four years instead of three. The non-Federal negotiators also pointed out that low-income individuals may not be required to file tax returns, so the proposed solution would not resolve the problem for the many borrowers who qualify for a discharge but are not required to file tax returns.

The Department responded by proposing to revise the regulations to require that a borrower submit income information on a form provided by the Secretary. The Department intends to develop a form that will be available by the time these regulations become effective. Borrowers will be required to submit the form to the Secretary to document their annual earnings. The form will require the borrower to certify the borrower's annual earnings from employment and will require the borrower to submit documentation to support the earnings information, if the borrower has such documentation. The documentation may include income tax returns, documentation of eligibility for Social Security disability benefits, or other documentation that supports the amount certified by the borrower.

The proposed regulations do not specify the content of the form, but the form will be made available for public comment before it is approved for use.

Return of Payments After a Total and Permanent Disability Assignment (34 CFR 674.61(b)(8), 682.402(c)(8), 682.402(r)(2), 682.402(r)(3), and 685.213(b)(4)(iii))

Statute: The HEA does not specify the treatment of payments received on a title IV loan after the borrower has received a total and permanent disability discharge on the loan.

Current Regulations: Sections 674.61(b)(7)(i) and 674.61(b)(7)(iii) of the Perkins Loan program regulations require an institution that receives a payment on a Perkins loan after it has assigned the loan to the Secretary during the disability discharge process to forward the payment to the Secretary. If the Secretary discharges the loan, the Secretary returns to the sender any payments made after the date of the physician's certification of the borrower's discharge application.

Section 682.402(c)(7)(vii) of the FFEL regulations requires a lender to forward to the guaranty agency any payment received on a FFEL loan after the lender receives a claim payment from the guaranty agency.

Section 682.402(r)(2) of the FFEL regulations requires a guaranty agency that receives a payment on a loan after it has assigned the loan to the Secretary during the disability discharge process to forward the payment to the Secretary. At the time the guaranty agency forwards the payment to the Secretary, it must notify the borrower that there is no need to continue to make payments on the loan. Under current § 682.402(r)(3), the Secretary returns the payments to the borrower after the Secretary makes a final determination to discharge the loan due to a total and permanent disability.

Section 685.213(b)(2)(ii) of the Direct Loan program regulations requires the Secretary, after discharging a Direct Loan, to return to the sender any payments received after the date of the physician's certification of the borrower's discharge application.

Proposed Regulations: Under proposed § 674.61(b)(8), if an institution receives a payment on a Perkins loan that has been assigned to the Secretary based on the Secretary's determination of the borrower's eligibility for a total and permanent disability discharge, the institution returns the payment to the sender.

Under proposed § 682.402(c)(8)(i)(C), after receiving a disability discharge claim payment from the guaranty agency, the FFEL lender must return to the sender any payments it receives after the date the physician certified the borrower's loan discharge application and any payments received after claim payment.

Under proposed § 682.402(r)(2), a guaranty agency must return to the sender any payments it receives on a FFEL loan that has been assigned to the Secretary based on the Secretary's determination of the borrower's eligibility for a total and permanent disability discharge.

Under proposed § 682.402(r)(3), after the Secretary discharges a FFEL loan, the Secretary returns to the sender any payments it receives on the loan after the date the borrower became totally and permanently disabled.

Under proposed § 685.213(b)(4)(iii) of the Direct Loan program regulations, after the Secretary discharges a Direct Loan, the Secretary returns to the sender any payments received after the date of the physician's certification of the borrower's discharge application.

Reasons: Under the proposed regulations, the assignment of a Perkins loan or the filing of a disability claim on a FFEL loan would not occur until after the Secretary has determined that the borrower qualifies for a total and permanent disability discharge. Therefore, there is no reason for payments received after those dates to be forwarded to the guaranty agency or to the Secretary. The Department is proposing to have the payments returned to the sender.

Total and Permanent Disability Discharge Application Process for Applications Based on Documentation From the Department of Veterans Affairs (34 CFR 674.61(c), 682.402(c)(9), and 685.213(c))

Statute: Sections 437(a)(2), which is applicable to the Direct Loan program under section 455(a)(1) of the HEA, and section 464(c)(1)(F)(iv) of the HEA provide that a FFEL, Perkins Loan, or Direct Loan borrower who has been determined by the Department of Veterans Affairs (VA) to be unemployable due to a service-connected disability and who provides documentation of that determination to the Secretary is considered totally and permanently disabled for the purpose of discharging the borrower's title IV loans. Section 437(a)(2) further specifies that a borrower who provides such documentation shall not be required to present additional documentation for the purpose of determining eligibility for a total and permanent disability discharge.

Current Regulations: Sections 674.61(c), 682.402(c)(8), and 685.213(c) of the Perkins Loan, FFEL, and Direct Loan program regulations describe the process for a veteran who is applying for a total and permanent disability discharge based on a determination by the VA that the veteran is unemployable due to a service-connected disability. The total and permanent disability discharge process based on VA documentation is similar to the total and permanent disability discharge process for non-veterans in the three loan programs, with a few major exceptions.

Sections 674.61(c)(2)(ii), 682.402(c)(8)(i), and 685.213(c)(1) of the current regulations require the veteran to submit to the Secretary documentation from the VA demonstrating that the veteran is unemployable due to a service-connected disability. This documentation takes the place of the physician's certification of total and permanent disability required of other borrowers.

The Perkins Loan and FFEL program regulations do not currently require the institution or guaranty agency to assign the loan to the Secretary if the institution or guaranty agency determines that the VA documentation supports the veteran's eligibility for a discharge. Sections 674.61(c)(2)(iii)(A) and 682.402(c)(8)(ii)(D) specify that the institution or guaranty agency is only required to submit the total and permanent disability discharge application and the VA documentation to the Secretary.

The three-year post-discharge monitoring period that generally applies to borrowers after the Secretary grants a total and permanent disability discharge does not apply to loans discharged based on documentation from the VA. The Secretary does not reinstate a loan that has been discharged based on documentation from the VA.

Proposed Regulations: The total and permanent disability discharge application process for veterans who rely on documentation from the VA in proposed §§ 674.61(c), 682.402(c)(9), and 685.213(c) matches the proposed regulations for total and permanent disability discharge applications for non-veterans. The exceptions in the current regulations discussed above are retained in the proposed regulations. Title IV loans discharged based on documentation from the VA are not assigned to the Secretary, are not subject to the three-year post discharge monitoring period, and are not reinstated.

In addition, under proposed §§ 674.61(c)(3)(iv)(E), 682.402(c)(9)(xi)(E), and 685.213(c)(2)(ii)(E), the notification to a veteran whose disability discharge request based on documentation from the VA has been denied would include information on how the veteran may apply for a total and permanent disability discharge under the regular process for non-veterans, if the documentation from the VA indicates that the veteran might qualify for a total and permanent disability discharge under that standard.

Reasons: The Department believes that the disability application process for veterans relying on a certification from the VA should be similar to the regular disability discharge process. Maintaining similar processes for both types of disability discharges will create less administrative burden for participants in the title IV loan programs and less confusion for borrowers. In addition, the Department believes that veterans will benefit by applying the changes proposed for the disability discharge process for non-veterans to the process for disability discharges based on VA documentation. Therefore, the Department is proposing to streamline the disability discharge process for veterans in the same manner that we are proposing to streamline the regular process.

FFEL Lender and Guaranty Agency Roles (34 CFR 682.402(c)(8), 682.402(g)(1), 682.402(g)(2), 682.402(h)(1), and 682.402(h)(3))

Statute: The HEA does not specify any particular roles for lenders or guaranty agencies in the processing of total and permanent disability discharges.

Current Regulations: Under § 682.402(c)(7)(i) of the FFEL regulations, if a borrower contacts a FFEL lender requesting a total and permanent disability discharge of a loan, the lender continues collection activity on the loan until it receives a disability discharge application certified by a physician or a letter from a physician asking for additional time to determine if the borrower is totally and permanently disabled. In the former situation, the lender suspends collection activity once it receives the application. In the latter, if the lender does not receive the total and permanent disability discharge application within 60 days of the physician's letter, the lender resumes collection activity. The lender also resumes collection activity on the loan if it receives the total and permanent disability discharge application and determines that the borrower does not qualify for a disability discharge. The lender may capitalize interest that accrued during the suspension of collection activity in accordance with § 682.402(c)(7)(iii).

If the lender receives the disability discharge application and determines that the application supports the conclusion that the borrower is totally and permanently disabled, the lender submits a disability claim to the guaranty agency, as specified in § 682.402(c)(7)(ii). Sections 682.402(g)(2)(i) and 682.402(g)(1)(iv) require the lender to submit the disability claim within 60 days of the date the lender determines that the borrower is totally and permanently disabled and to include a copy of the physician's certification of total and permanent disability with the claim.

Section 682.402(h)(1)(i)(B) requires a guaranty agency to pay the lender's claim within 90 days of the date it was filed, if the guaranty agency agrees with the determination of the lender. Under § 682.402(h)(3)(ii)(B), the amount payable on an approved disability discharge claim includes unpaid interest that accrued on the loan during the period the guaranty agency needed to review and approve the claim, not to exceed 90 days.

Under § 682.402(c)(7)(viii), the Secretary reimburses the guaranty agency for the disability claim after the agency pays the claim to the lender. Section 682.402(c)(7)(ix) requires the guaranty agency to assign the loan to the Secretary after the guaranty agency pays the disability claim.

Section 682.402(c)(7)(v) requires a guaranty agency to return the disability claim to the lender if the guaranty agency does not agree with the lender's determination that the borrower is totally and permanently disabled. If the disability claim is returned by the guaranty agency, the lender notifies the borrower that the application has been denied.

Proposed Regulations: Proposed § 682.402(c)(2)(ii)(C) eliminates the option for a physician to submit a letter requesting additional time to submit the total and permanent disability discharge application. Under the proposed regulations, the Secretary would direct all of the borrower's title IV lenders to suspend collection efforts for up to 120 days after the borrower informs the Secretary that he or she intends to apply for a total and permanent disability discharge.

Under proposed § 682.402(g)(1)(iv), a FFEL lender would not submit a copy of the total and permanent disability discharge application with the disability discharge claim it files with the guaranty agency. Instead, the FFEL lender would provide the guaranty agency with the notification the lender received from the Secretary directing the lender to submit the disability claim.

Under proposed § 682.402(g)(2), a FFEL lender must file a disability claim within 60 days of receiving the notice from the Secretary directing the lender to file the claim. Under proposed § 682.402(h)(3)(iii)(A), the amount of the claim payment by the guaranty agency includes interest that accrued on the loan for up to 45 days during which the guaranty agency processed the disability claim. Under proposed § 682.402(c)(8)(i)(D), the Secretary reimburses the guaranty agency for the disability claim after the guaranty agency pays the claim to the lender. Under proposed § 682.402(c)(8)(i)(E), the guaranty agency assigns the loan to the Secretary within 45 days of the date the guaranty agency paid the disability claim and receives the reimbursement payment from the Secretary.

Reasons: The Department is eliminating the option for a physician to submit a letter requesting more time for the borrower to submit a total and permanent disability discharge application because we believe that requiring such a letter would be cumbersome under the new process. The proposed regulations would provide a uniform period of suspension of collection activity for all borrowers.

The regulations specify that a FFEL lender may capitalize interest that accrues during the suspension period if the borrower does not submit a total and permanent disability discharge request, or if the request is denied. This provision is the same in the current regulations.

The proposed reductions in FFEL claim filing periods are intended to improve the timeliness with which a disability claim is processed in the FFEL program. Since neither the FFEL lender nor the guaranty agency would conduct medical reviews of the total and permanent disability discharge applications under the proposed new process, the Department believes that the timeframes for processing total and permanent disability discharge requests can be shortened.

The proposed regulations would specify a timeframe for a guaranty agency or Perkins school to assign a loan to the Secretary. The Department believes that specifying a timeframe for assignments will help to ensure that loans that qualify for a disability discharge are assigned to the Secretary promptly so the Secretary may complete the discharge.

Initially the Department proposed that guaranty agencies would be required to assign a FFEL loan to the Secretary within 30 days of a claim payment. Non-Federal negotiators representing guaranty agencies indicated that their current practice is to assign loans after receipt of the Federal reimbursement payment, not within a set number of days after a claim payment. In response to their concerns, the Department revised the proposed regulations to provide that a loan must be assigned within 45 days after receipt of the Federal reimbursement payment.

Income-Contingent Repayment Plans

Pay As You Earn Initiative (ICR–A Plan)

Statute: Section 455(d)(1)(D) of the HEA authorizes the Secretary to offer an income-contingent repayment (ICR) plan with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years. Section 455(e) of the HEA authorizes the Secretary to establish ICR plan repayment schedules through regulations.

Current Regulations: Under current 34 CFR 685.209, the annual amount payable by a borrower under the ICR plan may not exceed 20 percent of the borrower's discretionary income, and the maximum ICR repayment period is 25 years. If a loan has not been repaid at the end of the 25-year period, the unpaid portion of the loan is forgiven.

Proposed Regulations: In October 2011, President Obama announced the Pay As You Earn repayment initiative to help student loan borrowers reduce their monthly payments. The Pay As You Earn initiative reflected in these proposed regulations would be available to borrowers who: (1) did not have an outstanding loan under the Direct Loan or FFEL programs as of October 1, 2007, or as of the date they received a new loan after October 1, 2007; and (2) receive a disbursement of a Direct Subsidized Loan, a Direct Unsubsidized Loan or a student Direct PLUS Loan on or after October 1, 2011, or receive a Direct Consolidation Loan based on an application received on or after October 1, 2011, unless the Direct Consolidation Loan repays a Direct or FFEL loan that was outstanding as of October 1, 2007. The Pay As You Earn initiative reflected in these proposed regulations will cap a borrower's annual payment amount at 10 percent of the borrower's discretionary income and provide for forgiveness of any remaining loan balance after 20 years of repayment. These terms reflect changes to the separate income-based repayment (IBR) plan that will go into effect for new borrowers on or after July 1, 2014. To offer this repayment relief to borrowers earlier, the Secretary is using his authority to establish an ICR plan by regulation. The proposed regulations also make other changes to the ICR repayment plan to implement the Pay As You Earn initiative. The Secretary is proposing to implement the Pay As You Earn initiative as a new ''ICR–A'' plan in § 685.209(a). However, the Secretary realizes that for a small number of borrowers who would otherwise qualify for the IBR plan or the proposed ICR–A plan, the current ICR repayment plan may be more beneficial. Accordingly, the Secretary is proposing to retain the current ICR repayment plan as the ''ICR–B plan,'' with certain changes as discussed below, in new § 685.209(b).

The proposed ICR–A plan would generally have the same terms and conditions as the IBR plan that will be available to new borrowers on or after July 1, 2014. The terms and conditions of the proposed ICR–A plan include the following:

- A borrower's maximum annual payment amount would be capped at 10 percent of the difference between the borrower's AGI and 150 percent of the annual poverty guideline amount for the borrower's State and family size.
- Borrowers who repay under the ICR–A plan would qualify for forgiveness of any remaining loan balance after 20 years of qualifying payments and periods of economic hardship deferment.
- To initially qualify and to continue to make income-contingent payments under the plan, a borrower would be required to have a partial financial hardship. A borrower would be considered to have a partial financial hardship if the annual amount due on all of the borrower's eligible Direct Loan and FFEL program loans, as calculated based on a standard repayment plan with a 10-year repayment period, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the annual poverty guideline amount for the borrower's State and family size.
- For married borrowers who file a joint Federal tax return, the determination of a borrower's partial financial hardship status would be based on the combined income of both spouses and, if the spouse also has eligible loans, the combined eligible loan debt of both individuals. For a

married borrower who files an individual Federal tax return, only the borrower's income and loan debt would be considered.

- The ICR–A plan will be available to any borrower who is repaying a non-defaulted Direct Loan, except for a parent Direct PLUS loan or a Direct Consolidation loan that repaid a parent Direct or FFEL PLUS loan. As with IBR, parent Direct PLUS Loans and Direct Consolidation Loans that repaid parent Direct PLUS Loans or parent Federal PLUS Loans would not be eligible for repayment under the ICR–A plan.
- The term ''eligible loan'' would be defined as including any outstanding non-defaulted Direct Loan or FFEL program loan, except for a parent Direct PLUS loan, a parent Federal PLUS Loan, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a parent Direct PLUS Loan or parent Federal PLUS loan. The term ''eligible loan'' is used in connection with determining whether a borrower has, or continues to have, a partial financial hardship and, for a borrower who has eligible loans with more than one loan holder, to determine the borrower's prorated monthly payment amount under the ICR–A plan.
- Unpaid accrued interest would be capitalized only if a borrower repaying under the ICR–A plan is determined to no longer have a partial financial hardship, or if the borrower chooses to leave the ICR–A plan.
- For a borrower whose scheduled payment is less than the amount of interest that accrues each month on a subsidized loan or on the subsidized portion of a consolidation loan, the Secretary would not charge the borrower the remaining interest for a period of three consecutive years from the date the borrower begins repayment under the ICR–A plan, excluding periods of economic hardship deferment.

The ICR–A plan would also include certain changes that we are proposing to make to the IBR plan as discussed below under ''Income-Based Repayment Plan.'' Other terms and conditions of the proposed ICR–A plan are explained below.

Reasons: To support the Administration's goal of making it easier for borrowers to repay their Federal student loans, the Secretary is using his authority under section 455(d)(1)(D) of the HEA to implement the Pay As You Earn initiative as a second type of ICR plan in the Direct Loan Program.

Access to the ICR–A Plan

Statute: Under section 455(d)(1)(D) of the HEA, the ICR plan is available to repay any Direct Loans except for Direct PLUS Loans made to parent borrowers.

Current Regulations: Current regulations in § 685.208(a) provide that all Direct Loan borrowers except parent Direct PLUS Loan borrowers may repay their loans under the ICR plan.

Proposed Regulations: The proposed regulations would amend the provisions in § 685.208(a) related to borrower eligibility for the various Direct Loan repayment plans by adding a reference to the ICR–A plan and by providing that any type of Direct Loan could be repaid under the ICR–A plan except for a parent Direct PLUS Loan or a Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan. In the regulations governing the ICR plan, proposed § 685.209(a) would provide that the ICR–A plan is available to borrowers who meet both of the following criteria:

(1) Did not have an outstanding loan under the Direct Loan or FFEL programs as of October 1, 2007, or as of the date they received a new loan after October 1, 2007; and

(2) Receive a disbursement of a Direct Subsidized Loan, a Direct Unsubsidized Loan or a student Direct PLUS Loan on or after October 1, 2011, or receive a Direct Consolidation Loan based on an application received on or after October 1, 2011, unless that Direct Consolidation Loan repays a Direct or FFEL loan that was outstanding as of October 1, 2007.

Reasons: The Department is proposing to make the ICR–A plan available to new borrowers in fiscal year 2008 who receive a new loan in fiscal year 2012 or later. Fiscal years 2008 and 2012 began on October 1, 2007, and October 1, 2011, respectively. The proposed definition of ''eligible new borrower'' in § 685.209(a)(1)(iii) as an individual who had no outstanding balance on a Direct Loan or FFEL program loan as of October 1, 2007, or who had no outstanding balance on such a loan on the date the borrower obtained a loan after October 1, 2007, is consistent with the manner in which eligibility for the Direct Loan and FFEL teacher loan forgiveness programs is specified under §§ 685.217(a)(1) and 682.216(a)(1), respectively. To ensure that new borrowers in fiscal year 2008 who are enrolled during the 2011–2012 academic year can qualify for the ICR–A plan, the proposed regulations would specify that receipt of a new loan in fiscal year 2012 or later means receipt of any disbursement of a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a student Direct PLUS Loan on or after October 1, 2011. This means, for example, that a new borrower in 2008 who received the first disbursement of a 2011–2012 academic year loan in August or September 2011 (i.e., in fiscal year 2011) and who will graduate in the spring of 2012 would nonetheless be eligible for the ICR–A plan if a subsequent disbursement of that loan is made on or after October 1, 2011, in fiscal year 2012. The Department believes that offering the ICR–A plan to this population will provide a significant benefit to a group of student loan borrowers who are among those most likely to face difficulty repaying their loans under other repayment plans, while at the same time limiting additional costs to taxpayers.

The proposed regulations would also allow a borrower to choose the ICR–A plan if the borrower takes out a Direct Consolidation Loan on or after October 1, 2011. The Department originally proposed that a borrower could meet the requirement to receive a new loan in fiscal year 2012 or later by receiving a Direct Consolidation Loan based on an application received on or after October 1, 2011. In response to a request for clarification from a non-federal negotiator, the Department expanded the original proposal to clarify that an individual who receives a Direct Consolidation Loan based on an application received on or after October 1, 2011, is not eligible for the ICR–A plan if the Direct Consolidation Loan repays a loan that would otherwise make the borrower ineligible based on the requirement to be a new borrower as of October 1, 2007. For example, a borrower could not qualify for the ICR–A plan by obtaining a Direct Consolidation Loan (based on an application received on or after October 1, 2011) that repays earlier loans made to the borrower that were owed as of October 1, 2007. However, a borrower who had no outstanding balance on a Direct Loan or a FFEL program loan at the time the borrower obtained new loans after October 1, 2007, could qualify for ICR–A if he or she receives a Direct Consolidation Loan based on an application received on or after October 1, 2011, that repays the earlier loans made after October 1, 2007.

Interest Capitalization Under the ICR–A Plan

Statute: Section 455(e)(5) of the HEA authorizes the Secretary to promulgate regulations limiting the amount of interest that may be capitalized on loans repaid under the ICR plan and specifying the timing of capitalization under the plan.

Current Regulations: Under § 685.202(b)(4), generally the Secretary capitalizes unpaid interest annually for borrowers repaying under the ICR plan.

Current § 685.209(c)(5) further provides that if a borrower's monthly payment under the ICR plan is less than the accrued interest, the unpaid interest is capitalized until the outstanding principal amount is 10 percent greater than the original principal amount. After the outstanding principal amount is 10 percent greater than the original amount, interest continues to accrue but is not capitalized.

Proposed Regulations: Under proposed § 685.209(a)(2)(iv)(A), for borrowers repaying a Direct Loan under the ICR–A plan, unpaid accrued interest would be capitalized, as under the IBR plan, when a borrower is determined to no longer have a partial financial hardship or when a borrower chooses to leave the ICR–A plan. However, proposed § 685.209(a)(2)(iv)(B) would limit the amount of interest that is capitalized while a borrower is repaying under the ICR–A plan to 10 percent of the loan principal balance at the time the borrower entered the ICR–A plan. For borrowers who remain on the ICR–A plan after the 10 percent limit has been reached, interest would continue to accrue but would not be capitalized.

Reasons: Some of the non-Federal negotiators asked the Department to consider a proposal to cap the amount of interest and fees that may be charged to borrowers under both the ICR plan (including the proposed ICR–A plan) and the IBR plan at 150 percent of the loan principal amount. The negotiators suggested that this approach could be implemented at no additional cost to the taxpayer because it would not reduce the total amount paid by a borrower under the ICR or IBR plan but would lower the total loan amount forgiven at the end of the ICR or IBR repayment period. This would benefit borrowers by reducing the loan amount that could potentially be treated as taxable income if a borrower ultimately receives ICR or IBR loan forgiveness.

The Department considered this proposal but determined that the Secretary does not have the authority under the HEA to stop charging interest to borrowers under the ICR or IBR plans after the amount of accrued interest has reached a certain percentage of the loan principal.

Under the FFEL Program, lenders would have a contractual right to payment of the interest that would otherwise accrue on a loan but which would be capped prior to loan forgiveness under the proposal from the non-Federal negotiators. This would involve making significant Federal outlays to FFEL lenders that the Secretary does not have the legal authority to make.

As an alternative, the Department proposed to include in the ICR–A regulations a provision comparable to the current ICR provision that limits the amount of interest that may be capitalized to 10 percent of the original principal amount. Under the proposed regulations for the ICR–A plan, unpaid accrued interest would be capitalized (as under the IBR plan) when a borrower is determined to no longer have a partial financial hardship or chooses to leave the ICR–A plan. However, the amount of accrued interest that may be capitalized when a borrower is determined to no longer have a partial financial hardship would be limited to 10 percent of the original loan principal balance when the borrower entered repayment under ICR–A. For borrowers who remain on the ICR–A plan, interest would continue to accrue after the 10 percent limit on capitalization has been reached, but there would be no further capitalization. If a borrower chooses to leave the ICR–A plan, the 10 percent limit on capitalization of interest would not apply.

Borrower Options After Leaving the ICR–A Plan

Statute: Section 455(d)(3) of the HEA provides that a Direct Loan borrower may change repayment plans under such terms and conditions as may be established by the Secretary.

Current Regulations: Direct Loan borrowers, including borrowers repaying their loans under the ICR plan, are subject to the requirements of § 685.210(b) that govern changing repayment plans in the Direct Loan program. The regulations provide that a borrower may change his or her repayment plan at any time after the loan enters repayment by notifying the Secretary but may not change to a repayment plan that has a maximum repayment period of less than the number of years the loan has already been in repayment. For example, a borrower who has paid for 13 years under the extended repayment plan or the ICR plan cannot then change to the 10-year standard repayment plan.

Borrowers may, however, change to the ICR or IBR plans at any time. A borrower who is repaying a defaulted loan under the ICR plan may not change to another repayment plan unless the borrower was required to and made an ICR payment on the loan in each of the three prior months, or the borrower was not required to make an ICR payment but made three reasonable and affordable payments on the loan in each of the three prior months, and the Secretary approves the borrower's request to change repayment plans. Current regulations provide that if a borrower changes to a different repayment plan, the repayment period under the new plan is calculated from the date the loan initially entered repayment, except that if a borrower changes to the ICR plan or the IBR plan, the repayment period is determined in accordance with the regulations for those repayment plans.

Proposed Regulations: The proposed regulations for the ICR–A plan in § 685.209(a)(4)(ii), consistent with current ICR regulations, would provide that a borrower who wishes to leave the ICR–A repayment plan may change to a different repayment plan in accordance with the provisions in § 685.210(b) that are described earlier under ''Current Regulations.''

Reasons: As previously explained, the proposed ICR–A plan shares many of the features of the IBR plan. As a result, the Department initially proposed requiring borrowers who choose to leave the ICR–A plan to repay under the standard repayment plan, as IBR borrowers are required to do under section 493C(b)(8) of the HEA. However, several non-Federal negotiators pointed out that the ICR plan is not governed by a statutory requirement comparable to the statutory requirement for borrowers repaying under the IBR plan. Those negotiators argued that imposing such a regulatory requirement on ICR–A borrowers would pose a hardship on borrowers and be an unnecessary impediment to a borrower being able to leave the ICR–A plan and begin immediate repayment under another plan that may be better suited to the borrower's individual circumstances. After further consideration, the Department modified the proposed ICR–A regulations to reflect the same regulatory approach to changing repayment plans that applies to borrowers repaying under the existing ICR plan (the proposed ICR–B plan).

Current ICR Plan (ICR–B Plan)

Borrower Access to the ICR–B Plan

Statute: Section 455(d)(1) of the HEA requires the Secretary to offer Direct Loan borrowers a variety of repayment plans. The repayment plans offered include a standard repayment plan, a graduated repayment plan, an extended repayment plan for certain borrowers, an ICR plan (except for parent Direct PLUS loan borrowers), and beginning July 1, 2009, an IBR plan (except for parent Direct PLUS Loan borrowers and borrowers of Direct Consolidation Loans that repaid parent Direct PLUS Loans or parent Federal PLUS Loans). The ICR plan must provide for the payment of varying annual repayment amounts based on the income of the borrower paid over an extended period of time prescribed by the Secretary, not to exceed 25 years. Section 455(d)(2) of the HEA authorizes the Secretary to designate the standard, graduated, or extended repayment plan for a borrower who fails to choose a repayment plan, and section 455(d)(4) of the HEA authorizes the Secretary to provide, on a case-by-case basis, an alternative repayment plan if none of the available repayment plans are adequate to address a borrower's exceptional circumstances.

Current Regulations: Under § 685.208(a), the existing ICR plan (referred to in these proposed regulations as the ICR–B plan) is available to all Direct Loan borrowers except for parent borrowers of Direct PLUS loans. The Department's regulations do not include any other limitations on borrower access to the ICR plan. Section 685.209(c)(7)(iv) provides that if a borrower fails to provide consent for the Secretary to obtain tax return information necessary for the Secretary to determine the borrower's ICR monthly payment amount, the Secretary designates the standard repayment plan for the borrower.

Proposed Regulations: Proposed § 685.208(a) would allow a Direct Loan borrower (other than a parent Direct PLUS borrower) to continue to be able to select the ICR–B plan as one of the available repayment plans.

Reasons: The Department initially proposed to limit borrower access to the ICR–B plan, after implementation of the ICR–A plan, to those borrowers who would not otherwise have access to any other ''income-driven'' repayment plan (i.e., the current IBR plan, the IBR plan for new borrowers on or after July 1, 2014, or the proposed ICR–A plan). The Department believed that having too many income-driven repayment plans would be confusing to borrowers and would make it more difficult for them to determine which plan would best meet their needs. The Department also believed that offering multiple income-driven plans with similar terms and conditions would make it more difficult for the Department to promote these plans and to inform borrowers of the benefits available under each plan. However, several non-Federal negotiators stated that maintaining the fullest possible menu of repayment plan options would be in the best interests of borrowers. These negotiators felt that some borrowers, even those who qualify for the IBR or ICR–A plans, may view the ICR–B repayment plan as simpler and a better fit for them, and therefore full access to the current ICR plan should be retained. After further consideration of this issue, the Department decided to retain full borrower access to the ICR–B repayment plan.

Table 1 summarizes the borrower eligibility requirements for the current IBR plan, the proposed IBR plan revisions for new borrowers on or after July 1, 2014, the proposed ICR–A plan, and the current ICR plan (proposed ICR–B plan):

TABLE 1—ELIGIBILITY FOR INCOME-DRIVEN REPAYMENT PLANS

	Current IBR	Proposed revised IBR (with 07/01/2014 statutory changes)	Proposed ICR–A	Current ICR (proposed ICR–B)
Loan Program and Eligible Borrowers.	• Direct Loan Program ..... • FFEL Program	• Direct Loan Program only. • Only new borrowers as of July 1, 2014: ○ Must have no outstanding Direct Loan or FFEL balance as of July 1, 2014 or on the date a new Direct Loan is received after July 1, 2014.	• Direct Loan Program only. • Only new borrowers in 2008 who receive a Direct Loan disbursement in 2012 or later: ○ Must have no outstanding Direct Loan or FFEL balance as of October 1, 2007 or on the date a new Direct Loan or FFEL Program loan is received after October 1, 2007; *and* ○ Must receive a disbursement of a Direct Loan on/after October 1, 2011, or receive a Direct Consolidation Loan based on an application received on/after October 1, 2011 • FFEL new borrowers in 2008 may qualify through consolidation into the Direct Loan Program.	• Direct Loan Program only. • FFEL borrowers may qualify through consolidation into the Direct Loan Program.

The Department will make information available to borrowers to assist them in understanding their repayment plan options and determining their eligibility for the various income-driven plans.

Treatment of Married Borrowers Under the ICR–B Plan

Statute: Section 455(e)(2) of the HEA provides for an income-contingent repayment plan with a repayment amount based on the borrower's AGI or, if the borrower is married and files a joint Federal income tax return, based on the adjusted gross income (AGI) of the borrower and the spouse. In accordance with section 455(e)(3) of the HEA, if the AGI of a borrower repaying under the income-contingent repayment plan is unavailable or does not reasonably reflect the borrower's current income, the borrower is required to provide other documentation of income acceptable to the Secretary, and the Secretary uses that documentation to determine the repayment amount.

For the IBR plan, section 493C(d) of the HEA provides that if a married borrower repaying under the IBR plan files a separate Federal income tax return from his or her spouse, only the borrower's AGI is used to determine the borrower's IBR payment amount.

Current Regulations: Under current § 685.209(b)(1), if a married borrower chooses to repay under the income-contingent repayment plan, the AGI for both spouses is used to calculate the borrower's monthly payment amount, regardless of whether the borrower and spouse file a joint Federal income tax return or separate Federal tax returns. If a married borrower files a separate Federal income tax return from his or her spouse, the borrower's spouse must provide consent for the disclosure of the spouse's income.

Proposed Regulations: Proposed § 685.209(b)(2)(i) would provide that if a married borrower repaying under the ICR–B plan files a Federal income tax return separately from his or her spouse, only the borrower's AGI would be used to determine the borrower's monthly ICR–B payment amount. The joint income of both spouses would be used only if the borrower files a joint Federal income tax return.

Reasons: The treatment of married borrowers under the current ICR plan regulations is based on section 455(e)(3) of the HEA, which allows the Secretary to use other documentation of income provided by the borrower to determine the ICR payment amount if the borrower's AGI does not reasonably reflect the borrower's current income. At the time the current ICR regulations were developed, the Department believed that if a married borrower filed a separate tax return from his or her spouse, using only the borrower's AGI would not provide for an accurate determination of the monthly amount the borrower could afford to repay.

Accordingly, the current ICR regulations provide for consideration of the combined incomes of both spouses, even when married borrowers file separate Federal income tax returns. In contrast, the HEA provides that for a married borrower who chooses to repay under the IBR plan, the combined income of the borrower and the borrower's spouse is used to determine the monthly IBR payment amount only if the borrower and spouse file a joint Federal income tax return. To provide for consistent treatment of married borrowers in all of the repayment plans under which the monthly payment amount is based on the borrower's income, the Department believes it is appropriate to amend the regulations for the current ICR plan so that if a married borrower repaying under the ICR–B plan files a Federal income tax return separately from his or her spouse, only the borrower's AGI would be used to determine the borrower's monthly ICR–B payment amount. The joint income of both spouses would be used only if the borrower files a joint Federal income tax return.

Borrowers Repaying Under the ICR–B Plan Who Fail To Provide Required Documentation of Income

Statute: The HEA does not address the treatment of borrowers repaying under the ICR plan who fail to provide the annual income information required by the Secretary to determine the monthly ICR payment amount.

Current Regulations: Current § 685.209(c)(7)(iv) provides that if a borrower selects the ICR plan but fails to provide the required consent to the disclosure of income information, fails to renew a previously provided written consent after it has expired, or withdraws consent and does not select another repayment plan, the Secretary designates the standard repayment plan for the borrower. For the IBR plan, current § 685.221(e)(2) provides that, under these same circumstances, the Secretary recalculates the borrower's monthly payment and the maximum recalculated amount the borrower is required to repay is the amount that would be required under a standard repayment plan with a 10-year repayment period, based on the amount of the borrower's loans that were outstanding at the time the borrower selected the IBR plan. In such cases, the repayment period based on the recalculated payment amount may exceed 10 years.

Proposed Regulations: Under proposed § 685.209(b)(3)(vi)(D), a borrower currently repaying under the ICR–B plan who fails to provide the annual income information needed to determine the borrower's monthly payment amount would be treated the same as a borrower repaying under the IBR plan who does not provide the required information needed to determine the IBR payment amount, as described in the prior discussion of the current regulations and explained in the following discussion of changes to the IBR plan.

Reasons: Under the current regulations, a borrower repaying under ICR who does not provide the require consent to disclosure of income information is required to repay under the standard repayment plan. However, in some cases, a borrower may have been in repayment under the ICR plan longer than the maximum repayment period under the standard repayment plan. Placing the borrower on the standard repayment plan would thus conflict with the provision in § 685.210(b) that prohibits a borrower from changing to a repayment plan with a maximum repayment period of less than the number of years the borrower's loan has already been in repayment. The proposed regulations address this issue by conforming the ICR–B regulations with the current IBR regulations governing the treatment of borrowers who fail to provide required income documentation and provide greater consistency in the treatment of borrowers under the various income-driven repayment plans.

Other Changes to the Current ICR Plan (ICR–B Plan)

Statute: The HEA does not address the changes discussed in this section.

Current Regulations: Final regulations published on October 23, 2008 (73 FR 63232), inadvertently deleted § 685.209(c)(4)(iii), (iv), and (v) from the ICR plan regulations. Paragraph (c)(4)(iii) provided that if a borrower repays more than one loan under the ICR plan, a separate repayment period for each loan begins when that loan enters repayment. Paragraph (c)(4)(iv) stated that if a borrower has not repaid a loan in full at the end of the 25-year repayment period, the Secretary cancels the unpaid portion of the loan. Paragraph (c)(4)(v) provided that at the beginning of the repayment period under the ICR plan, a borrower is required to make monthly payments of the amount of interest that accrues until the Secretary calculates the monthly payment amount based on the borrower's income.

Current § 685.209(c)(2) specifies that the Secretary requires alternative documentation of income from borrowers in their first and second years of repayment, when the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income.

Current § 685.209(c)(7) requires a borrower who repays under the ICR plan to provide written consent to the disclosure of certain tax return information by the Internal Revenue Service (IRS) to the Secretary for purposes of determining the borrower's ICR payment amount. A borrower is required to provide consent for a period of five years.

Proposed Regulations: The proposed regulations restore the provisions inadvertently deleted from § 685.209(c)(4)(iii) through (v) in 2008 and place them in new §§ 685.209(b)(1)(x), (b)(3)(iii)(C), and (b)(3)(iii)(D). The proposed regulation would remove the current provision in § 685.209(c)(2) related to alternative documentation of income for borrowers in their first and second year of repayment. In addition, the proposed regulations would replace the IRS consent requirement in current § 685.209(c)(7) with a more general requirement in new § 685.209(b)(3)(vi) for the borrower to provide acceptable documentation, as determined by the Secretary, of the borrower's AGI.

Reasons: Restoring the three deleted provisions corrects a technical error resulting from the October 23, 2008 final regulations. The Department believes that the current provision in § 685.209(c)(2) is unnecessary, since current § 685.209(c)(1) (to be retained as proposed § 685.209(b)(3)) already permits the Secretary to require alternative documentation of income if a borrower's AGI does not reasonably reflect current income.

The Department is proposing to replace the current IRS consent requirement with a requirement for the borrower to provide acceptable documentation of AGI because the existing consent regulations no longer reflect current operational procedures in the Direct Loan Program. The consent process described in current § 685.209(c)(7) was developed in consultation with the IRS at the beginning of the Direct Loan Program. However, there have been increasing delays in obtaining information from the IRS. The Secretary now obtains the necessary income information for most borrowers repaying under ICR through other means, such as by having borrowers submit copies of their most recently filed Federal income tax returns. The proposed rules are consistent with that practice. Further, the proposed regulation is consistent with efforts the Department is currently undertaking to streamline the application and income verification process, by working with the IRS, so that borrowers can more easily enroll and participate in the ICR and IBR repayment plans.

Income-Based Repayment Plan

Partial Financial Hardship (34 CFR 685.221(a)(5)), Income-Based Payment Amount (§ 685.221(b)(1)), and Loan Forgiveness Period (§ 685.221(f))

Statute: Section 493C of the HEA authorized the IBR plan for Direct Loan and FFEL program borrowers. To initially qualify for the IBR plan and to continue to make income-based payments under that plan, a borrower must have a partial financial hardship. Section 493C(a)(3) of the HEA provides that a borrower has a partial financial hardship if the annual amount due on all of the borrower's eligible Direct Loan and FFEL program loans, as calculated based on a standard repayment plan with a 10-year repayment period, exceeds 15 percent of the difference between the borrower's adjusted gross income (AGI) and 150 percent of the annual poverty guideline amount for the borrower's family size and State. During any period when a borrower who is repaying under the IBR plan has a partial financial hardship, the borrower's monthly loan payment may not exceed 15 percent of the difference between the borrower's AGI and 150 percent of the applicable annual poverty guideline amount, divided by 12.

Section 493C(b)(7) of the HEA provides that a borrower who has participated in the IBR plan qualifies for forgiveness of any remaining loan balance after making qualifying payments (including periods of economic hardship deferment) over a period of time prescribed by the Secretary, not to exceed 25 years.

The SAFRA Act included in the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) made two changes to the terms and conditions of the IBR plan. First, section 2213 of the SAFRA Act amended section 493C(a)(3) of the HEA by changing the percentage used in the formula for determining whether a borrower has a partial financial hardship and for calculating the maximum IBR payment amount during periods of partial financial hardship from 15 percent to 10 percent. Second, the maximum repayment period after which a borrower repaying under the IBR plan qualifies for forgiveness of any remaining loan balance was changed from 25 years to 20 years. These amendments apply only to new Direct Loan borrowers on or after July 1, 2014. For all other borrowers repaying under IBR, the current 15 percent and 25-year provisions would continue to apply.

Current Regulations: The current IBR plan regulations in § 685.221 reflect the 15 percent standard for determining whether a borrower has a partial financial hardship and for calculating the maximum IBR payment amount during periods of financial hardship. In this preamble, this income-based monthly payment amount that applies during a period of partial financial hardship is referred to as the ''monthly PFH payment amount.'' The current regulations also provide that a borrower qualifies for loan forgiveness after making the equivalent of 25 years of payments through a combination of qualifying payments and periods of economic hardship deferment.

Proposed regulations: Proposed § 685.221(a)(4) would define ''new borrower'' for purposes of the changes to the IBR plan as an individual who has no outstanding balance on a Direct Loan or FFEL program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014. This is consistent with the definition of ''new borrower'' as used for purposes of teacher loan forgiveness under § 685.217(a)(1).

The proposed regulations would revise the definition of ''partial financial hardship'' in § 685.221(a)(5) to reflect the statutory provision and state that for new borrowers after July 1, 2014, a borrower is considered to have a partial financial hardship if the annual amount due on all of the borrower's eligible Direct Loan and FFEL Program loans, as calculated based on a standard repayment plan with a 10-year repayment period, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the annual poverty guideline amount for the borrower's family size. The proposed regulations would revise § 685.221(b)(1) to provide that for a new borrower after July 1, 2014, the maximum IBR monthly payment amount during periods of partial financial hardship may not exceed 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline amount for the borrower's family size, divided by 12.

Finally, the proposed regulations would revise § 685.221(f) to reflect the statutory changes made by the SAFRA Act and provide that a new borrower who has participated in the IBR plan qualifies for loan forgiveness after 20 years of qualifying payments and periods of economic hardship deferment.

Reasons: The proposed regulations implement statutory provisions that were added to the HEA by the SAFRA Act. Because the changes to the IBR plan made by the SAFRA Act apply only to new borrowers on or after July 1, 2014, and because the SAFRA Act ended the authority of lenders to make new loans under the FFEL Program effective July 1, 2010, the proposed changes apply only in the Direct Loan Program regulations.

In response to a request for clarification from one of the non-Federal negotiators, the Department clarified that qualifying payments made during the 25-year or 20-year (as applicable) IBR repayment period do not have to be consecutive payments. Unless the regulations specifically state that payments must be consecutive to meet the requirements of a particular provision, it is intended that the payments need not be consecutive.

Repayment of Loans Under the IBR Plan

Statute: The HEA does not address the changes discussed in this section.

Current Regulations: For the Direct Loan Program, current § 685.208(a)(4) requires that all of a borrower's Direct Loans be repaid under the same repayment plan unless a loan is not eligible for repayment under that plan. For the FFEL Program, current § 682.215(b)(3) provides that if a borrower selects the IBR plan, the loan holder must require that all of the borrower's eligible loans owed to that holder be repaid under the IBR plan, unless the borrower requests otherwise.

Proposed Regulations: Proposed § 682.215(b)(3) would require a borrower who chooses the IBR plan to repay all of his or her loans under the IBR plan, unless some of the borrower's loans are not eligible for repayment under IBR. As a result of this change, a borrower who chooses the IBR plan would no longer be able to request that one or more IBR-eligible loans be excluded from that plan.

Reasons: The Department is proposing this change to provide consistency with the Direct Loan Program regulations.

Annual IBR Partial Financial Hardship Assessment

Statute: Section 493C(c) of the HEA provides for the Secretary to establish procedures for annually determining a borrower's eligibility to make income-based payments (i.e., to determine each year whether a borrower who initially qualified for the IBR plan continues to have a partial financial hardship). These procedures include verifying the borrower's annual income, verifying the annual amount due on the borrower's eligible loans, and any other procedures necessary to implement the IBR plan.

Under section 493C(b)(6) of the HEA, if a borrower repaying under the IBR plan is determined to no longer have a partial financial hardship or chooses to no longer make income-based payments, the borrower's monthly payment amount is recalculated and is no longer based on the borrower's income. In this situation, proposed § 682.215(e)(8)(ii) provides the maximum recalculated monthly payment amount the borrower would pay on the borrower's eligible loans under a standard repayment plan with a 10-year payment period, based on the loan amount owed at the time the borrower selected the IBR plan. The repayment period based on the recalculated payment amount may exceed 10 years. In accordance with section 493C(b)(3)(B) of the HEA, unpaid interest is capitalized if a borrower is determined to no longer have a partial financial hardship or chooses to stop making income-based payments.

Current Regulations: Under current § 685.221(e)(1) and § 682.215(e)(1), the Secretary or the FFEL loan holder determines whether a borrower has a partial financial hardship for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary or the loan holder requires the borrower to provide documentation of his or her income and to annually certify the borrower's family size.

Under current § 685.221(e)(1)(i) and § 682.215(e)(1)(i), the Secretary or the FFEL loan holder determines whether a borrower has a partial financial hardship by requiring the borrower to provide written consent to the disclosure of AGI by the IRS. If the borrower's AGI is unavailable or the Secretary or loan holder believes that the borrower's reported AGI does not reasonably reflect current income, the Secretary or the loan holder may use other documentation provided by the borrower to verify income (''alternative documentation of income''). In subregulatory guidance issued in a June 12, 2009, electronic announcement posted on the Department's Information for Financial Aid Professionals Web site, the Department authorized FFEL loan holders to accept a signed copy of the borrower's most recently filed Federal income tax return as an alternative to requiring the borrower to provide written consent to the disclosure of AGI by the IRS. The Department adopted this same practice in the Direct Loan Program.

In accordance with current § 685.221(e)(2) and § 682.215(e)(2), if a borrower who is repaying under the IBR plan fails to renew the required consent to disclosure of AGI by the IRS, or withdraws consent and does not select another payment plan, the borrower's monthly payment amount is recalculated in accordance with § 685.221(d)(1) or § 682.215(d)(1). In addition, unpaid interest is capitalized in accordance with § 685.221(b)(4) and § 682.215(b)(5). The same treatment applies if a borrower fails to provide a copy of his or her most recently filed Federal tax return (if used as an alternative to written consent to disclosure of AGI) or fails to provide alternative documentation of income if required to do so by the Secretary or the loan holder.

Sections 685.221(d)(1) and 682.215(d)(1) reflect the statutory requirement in section 493C(b)(6) of the HEA for the recalculation of a borrower's monthly payment amount if a borrower repaying under the IBR plan is determined to no longer have a partial financial hardship or chooses to stop making income-based payments. If a borrower fails to provide the required income documentation needed by the Secretary or the loan holder to determine whether the borrower continues to have a partial financial hardship, the borrower is considered to no longer have a partial financial hardship. The maximum recalculated monthly payment amount for a borrower who is determined to no longer have a partial financial hardship is the amount the borrower would be required to pay under a standard repayment plan with a 10-year payment period, based on the amount owed on the borrower's loans at the time the borrower selected the IBR plan. In this preamble, this recalculated payment amount is referred to as the ''permanent standard amount.''

Proposed Regulations: The proposed regulations would add several new written notifications to borrowers and other provisions related to the initial and annual determination of partial financial hardship status and the consequences if a borrower fails to provide documentation of income or other information required for the annual partial financial hardship assessment. The proposed regulations would also modify the income documentation requirements and, for the FFEL Program, add a requirement for some married borrowers to provide the loan holder with information related to the eligible loan debt of the borrower's spouse. Finally, the proposed regulations would clarify the treatment of borrowers who request a change from another repayment plan to the IBR plan but who do not provide the information required to determine eligibility for the IBR plan.

Under proposed § 685.221(e)(2) and § 682.215(e)(2), the Secretary or the FFEL loan holder, after making a determination that a borrower has a partial financial hardship to qualify for the IBR plan for the year the borrower initially selects the plan and for any subsequent year that the borrower has a partial financial hardship, would send the borrower a written notification that would include the following information:

- The borrower's scheduled monthly PFH payment amount and the time period during which that monthly PFH payment amount will would apply (''annual payment period'');
- Information about the requirement for the borrower to annually provide income information; in some cases for married FFEL Program borrowers, to provide information about the eligible loans of the borrower's spouse; and to certify family size, if the borrower chooses to remain on the IBR plan after the borrower's first year on the plan;
- An explanation that the borrower would be notified in advance of the date by which the Secretary or loan holder must receive this information;
- An explanation of the consequences if the borrower does not provide the required information each year;
- An explanation of the consequences if the borrower no longer wishes to repay under IBR; and
- Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary or the loan holder recalculate the borrower's monthly PFH payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly PFH payment amount no longer reflects the borrower's current income. If the monthly PFH payment amount is recalculated based on the borrower's request, the Secretary or the loan holder would send the borrower a written notification that includes the borrower's new calculated monthly PFH payment amount, new annual payment period, and the other information just described.

Under proposed new § 685.221(e)(3) and § 682.215(e)(3), for each subsequent year that a borrower repaying under the IBR plan has a partial financial hardship, the Secretary or the loan holder would establish the date by which the income information and other documentation required for the annual partial financial hardship assessment must be received (''annual deadline''), and would send the borrower a written notification in advance of the annual deadline informing the borrower of the annual documentation requirement. The proposed regulations would provide for the Secretary or the loan holder to send advance notification of the annual documentation requirement to the borrower no later than 60 days and no earlier than 90 days before the annual deadline. The annual deadline established by the Secretary or the loan holder for receipt of the required documentation could not be earlier than 35 days before the end of the borrower's current annual payment period. The notification of the annual documentation requirement would have to include the following information:

- The annual deadline by which the Secretary or the loan holder must receive the required information; and
- The consequences if the Secretary or the loan holder does not receive the required information within 10 days following the annual deadline, including the borrower's recalculated permanent standard monthly payment amount, the effective date for the recalculated monthly payment, and an explanation that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period.

Proposed § 685.221(e)(4) and § 682.215(e)(4) would provide that each time the Secretary or the loan holder makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower remains on the IBR plan, the Secretary or the loan holder would send the borrower a written notification that includes the following information:

- The borrower's recalculated permanent standard payment amount;
- An explanation that unpaid interest will be capitalized; and
- Information about the borrower's option to request, at any time, that the Secretary or the loan holder make a new determination of whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option.

If the Secretary or the loan holder determines that the borrower again has a partial financial hardship based on a borrower's request for redetermination, the Secretary or the loan holder would determine the borrower's new monthly PFH payment amount and send the borrower a written notification including the same information that is provided to a borrower when he or she is determined to have a partial financial hardship to initially qualify for the IBR plan and again for any subsequent year that a borrower who has a partial financial hardship remains on the plan.

Under proposed § 685.221(e)(5) and § 682.215(e)(5), for each subsequent year that a borrower who does not have a partial financial hardship remains on the IBR plan, the Secretary or the loan holder would send a written notification to the borrower that includes information on the borrower's option to request, at any time, that the Secretary or the loan holder make a new determination of whether the borrower has a partial financial hardship, as described in the discussion of § 685.221(e)(4) and § 682.215(e)(4).

Proposed § 685.221(e)(6) and § 682.215(e)(6) would clarify that if a borrower who is currently repaying under another repayment plan selects the IBR plan but does not provide the information required by the Secretary or the loan holder to determine the borrower's eligibility for the IBR plan, the borrower would remain on his or her current repayment plan.

Under proposed § 685.221(e)(7) and § 682.215(e)(7), the Secretary or the loan holder would require a borrower to pay the permanent standard amount if a borrower currently repaying a monthly PFH payment amount remains on the plan for a subsequent year, but the Secretary or the loan holder does not receive the information required for the annual partial financial hardship assessment within 10 days of the annual deadline previously provided to the borrower, unless the Secretary or the loan holder is able to determine the borrower's new monthly PFH payment amount before the end of the annual payment period.

Proposed § 682.215(e)(8)(i) would require a loan holder to promptly determine a borrower's new monthly payment amount if the loan holder receives the information required for the annual partial financial hardship assessment within 10 days of the annual deadline provided to the borrower. If the information is received within 10 days of the annual deadline, but the loan holder does not determine the borrower's new monthly payment amount by the end of the borrower's current annual payment period, the proposed regulations would prohibit the loan holder from converting the borrower's monthly payment to the permanent standard amount and would require the loan holder to maintain the borrower's current scheduled monthly PFH payment amount until the new monthly payment amount is calculated.

Under proposed § 682.215(e)(8)(ii), if the loan holder calculates a new monthly PFH payment that is less than the borrower's previously calculated monthly PFH payment amount, the loan holder would be required to make the appropriate adjustment to the borrower's account to reflect the additional amounts resulting from any payments at the previously calculated monthly PFH payment amount that the borrower made after the end of the most recent annual payment period. Unless the borrower requests otherwise, the loan holder would not apply the additional amounts to future monthly payments.

The proposed regulations would require the loan holder to apply any excess payment amounts made after the end of the most recent annual payment period in accordance with the IBR payment application rules in § 682.215(c)(1). The excess payment amounts would be applied in the following order: Accrued interest; collection costs; late charges; loan principal. Appropriate adjustments would also include, but are not limited to, adjustments to the lender's interest subsidy and special allowance billings based upon the new monthly PFH payment amount, and establishing a new annual payment period beginning on the day after the prior annual payment period ended to ensure that the annual date for determining whether a borrower continues to have a partial financial hardship remains the same.

Under proposed § 682.215(e)(8)(iii), if the new monthly payment amount is equal to or greater than the borrower's previously calculated monthly PFH payment amount, the loan holder would not make any adjustments to the borrower's account to make up the difference between a prior lower monthly PFH payment amount that the borrower continued to make after the end of the previous annual payment period and the borrower's new higher monthly payment. Proposed § 685.221(e)(8) would establish requirements in the Direct Loan Program comparable to the FFEL Program requirements in proposed § 682.215(e)(8)(i) through (iii).

Proposed § 682.215(e)(9) would provide that if a loan holder receives the information required for the annual partial financial hardship assessment more than 10 days after the specified annual deadline provided to the borrower and the borrower's monthly payment amount is converted to the permanent standard amount, the loan holder may grant forbearance with respect to any payments that are overdue or that would be due at the time the new calculated monthly PFH payment amount is determined, but only if the new calculated monthly PFH payment amount is zero or is less than the borrower's previously calculated monthly PFH payment amount.

If forbearance is granted, capitalization of interest at the end of the forbearance period would be limited to the interest accrued during the portion of the forbearance covering past-due payments before the end of the prior annual payment period that was capitalized at the time of conversion of the borrower's payment to the permanent standard amount. Interest that accrues during the portion of the forbearance period that covers payments that are overdue after the end of the prior annual repayment period would not be capitalized.

Proposed § 685.221(e)(9)(i) would establish the same requirements in the Direct Loan Program. In addition, proposed § 685.221(e)(9)(ii) would specify that any payments a borrower continued to make at the previously calculated monthly PFH payment amount after the end of the prior annual payment period and before the new monthly PFH payment amount is calculated are considered to be qualifying payments for purposes of the public service loan forgiveness program under § 685.219, provided that the payments otherwise meet the eligibility requirements of that program. These payments would also count for purposes of IBR loan forgiveness.

With regard to documentation of income, proposed § 685.221(e)(1)(i) and § 682.215(e)(1)(i) would amend current regulations by replacing the requirement that a borrower provide consent to the disclosure of AGI by the IRS with a general requirement for the borrower to provide documentation, acceptable to the Secretary or to the loan holder, of the borrower's AGI. Proposed § 685.221(e)(1)(ii) and § 682.215(e)(1)(ii) would retain the current provision requiring a borrower to provide other documentation of income if the borrower's AGI is not available or if the borrower's AGI does not reasonably reflect the borrower's current income.

Proposed § 682.215(e)(1)(iii) would specify that if the spouse of a married borrower who files a joint Federal income tax return has eligible loans and the loan holder does not hold at least one of the spouse's eligible loans, either the borrower's spouse must provide consent for the loan holder to access information about the spouse's eligible loans in the National Student Loan Data System (NSLDS), or the borrower must provide other documentation, acceptable to the loan holder, of the spouse's eligible loan information.

The proposed changes described in this section would also be incorporated, where applicable, in the proposed regulations for the ICR–A plan and the ICR–B plan.

Reasons: The Department's current regulations do not require that borrowers be notified each year in advance of the annual requirement to provide income information and certify family size, nor do current regulations specify a deadline by which the borrower must provide this information before the borrower's current monthly PFH payment amount is converted to the permanent standard amount. During the public comment period prior to the beginning of the formal negotiated rulemaking sessions, the Department received numerous comments suggesting that not all loan holders currently notify borrowers in advance of the annual documentation requirement, and that there are inconsistencies among loan holders in the amount of time that borrowers are given to provide the required income information. As a result, some borrowers who continue to have a partial financial hardship have their payments converted to the permanent standard amount because they were not aware that it was time for their annual partial financial hardship assessment, or because they were not given sufficient time to provide the required income information.

During the negotiated rulemaking sessions, some non-Federal negotiators recommended that the proposed regulations include an explicit requirement for loan holders to promptly determine whether a borrower continues to have a partial financial hardship upon receipt of the required income documentation from the borrower. The borrower notification requirements included in these proposed regulations are intended to address these concerns. They ensure that a borrower would be notified of the annual documentation requirement, and of the consequences if the borrower does not comply, at the time he or she is initially determined eligible for the IBR plan. A borrower who remains on the IBR plan and currently has a partial financial hardship would be notified of the annual documentation requirement in advance of the annual deadline for providing the required information needed to determine whether he or she continues to have a partial financial hardship. The proposed regulations for the FFEL Program would also require loan holders to promptly determine a borrower's new monthly payment amount after receiving the required income information from the borrower. The Secretary would apply the same requirement in the Direct Loan program.

The proposed regulations would also provide for more consistent treatment of borrowers by specifying the earliest date that may be established as the annual deadline for a borrower to provide the annual documentation and by specifying the latest and earliest dates prior to the annual deadline that a borrower may be notified of the requirement to provide the documentation.

The Department initially proposed that the annual notification reminding borrowers of the upcoming deadline for submitting income documentation could be sent no later than 60 days before the annual deadline established by the Secretary or the loan holder. Some of the non-Federal negotiators, while supportive of this notification requirement, expressed concerns that this would allow for the notification to be sent too far in advance of the annual deadline for it to be effective. The Department agreed that it would be appropriate to place a limit on how early the notification may be sent and modified the proposed regulatory language to specify that the notification may be sent no later than 60 days and no earlier than 90 days before the annual deadline.

During the first negotiated rulemaking session, some of the non-Federal negotiators recommended that the proposed regulations provide a borrower with a three-month ''grace period'' following the end of the borrower's current annual repayment period during which the borrower could provide the required income documentation without being subject to conversion to the permanent standard payment amount and capitalization of unpaid interest. A borrower who submitted the required documentation during the grace period would continue making his or her existing monthly PFH payment amount until the loan holder calculated the new payment amount. Once the loan holder calculated the new payment amount, the borrower's account would be adjusted if the borrower was determined to continue to have a partial financial hardship. Specifically, the recommendation from the non-Federal negotiators provided for reimbursement to the borrower if, during the grace period, the borrower had continued to make payments at the previously scheduled amount that were greater than the new payment amount. The recommendation also provided that any underpayment during the grace period (if the borrower continued to make payments at the previously scheduled monthly PFH payment amount that were less than the new monthly PFH payment amount) would be distributed evenly across the borrower's payments for the current annual payment period.

At the second negotiated rulemaking session, the Department presented proposed regulatory language that provided borrowers with a 60-day grace period following the end of the borrower's current annual payment period to submit the required income documentation to the Secretary or the loan holder. Under this proposal, a borrower's previously scheduled monthly PFH payment amount would have been continued during the grace period, with no conversion to the permanent standard amount unless the borrower did not provide the required documentation until after the end of the 60-day grace period. The Department's proposal did not provide for any adjustments to the borrower's account once the borrower's new monthly payment had been calculated.

Some non-Federal negotiators representing loan holders and servicers indicated that the proposed regulations providing for a grace period could be difficult to implement, since most loan holders' systems are set up to automatically convert a borrower's scheduled monthly PFH payment amount to the permanent standard payment amount at the end of the borrower's current 12-month annual payment period, if the borrower's new scheduled monthly PFH payment amount has not been calculated prior to that date. In addition, the same non-Federal negotiators noted that the proposed grace period approach would cause the ending date of the borrower's current annual payment period to shift every year if the previously scheduled monthly PFH payment amount had to be maintained for up to an additional 60 days after the end of original annual payment period, potentially causing confusion for borrowers and requiring loan holders to make significant systems changes.

These non-Federal negotiators presented an alternative proposal that provided for loan holders to notify borrowers of the deadline by which the loan holder must receive the required information for the annual partial financial hardship assessment. If the loan holder received the required information by the deadline and the borrower was determined to continue to have a partial financial hardship, the loan holder would be required either to prevent the conversion of the borrower's monthly payment to the permanent standard amount or remediate the consequences of such a conversion for the borrower. The proposal did not specify what would constitute remediation of a conversion to the permanent standard payment amount.

This proposal from the loan holders and servicers further provided that a loan holder could grant forbearance with respect to any payments that were overdue or would be due upon the loan holder's determination that a borrower continued to have a partial financial hardship, if the determination resulted in a new monthly PFH payment amount of zero. In addition, the proposal allowed for loan holders to grant forbearance to borrowers who were not more than 120 days delinquent, if the loan holder received the required income documentation after a borrower's monthly payment had been converted to the permanent standard amount and the loan holder determined that the borrower qualified for a new period of partial financial hardship with a monthly PFH payment amount greater than zero.

The Department agreed with the proposal from the negotiators representing loan holders and servicers to require that borrowers be notified of the deadline by which the loan holder must receive the documentation required for the annual partial financial hardship assessment to avoid conversion to the permanent standard payment amount. We included a provision for such a deadline in revised regulatory language presented at the third negotiated rulemaking session. The language proposed by the Department at the beginning of the third session allowed for the annual deadline to be established by the Secretary or the loan holder, without any limitation on how far in advance of the end of the borrower's current annual repayment period the deadline could be set. However, some non-Federal negotiators representing borrowers expressed concerns that having the deadline date determined at the discretion of the loan holder would continue to allow for inconsistent treatment of borrowers, since the date might differ significantly among loan holders.

The same negotiators were also concerned that leaving the determination of the deadline date to the discretion of individual loan holders would allow for the date to be different each year and result in confusion for borrowers. In response to these concerns, the Department modified the proposed regulatory language to specify that the annual deadline may be no earlier than 35 days before the end of the borrower's current annual payment period. The 35-day period was discussed and agreed to by all of the non-Federal negotiators.

Some non-Federal negotiators representing borrowers, noting the potentially serious consequences for borrowers who do not provide the required information by the deadline, urged the Department to provide some flexibility in the regulations so that borrowers would not be subject to conversion to permanent standard and interest capitalization for being as little as one day late. These negotiators also objected to the proposed requirement for the loan holder to receive the documentation by the specified deadline and stated that the regulations should simply require the borrower to submit the documentation by the deadline. They noted that the proposed regulations did not require loan holders to notify borrowers that their documentation had been received, with the result that borrowers would have no way of proving that the information they sent was received by the deadline.

These negotiators also argued that requiring borrowers to submit the information by the deadline would allow for proof that the borrower was in compliance with the submission deadline by means of the postmark on documentation submitted by mail. Other non-Federal negotiators, however, noted that the United States Postal Service no longer routinely adds postmarks to mail and said that the only way for a borrower to prove that a document had been mailed and received would be for the borrower to request confirmation of receipt. The negotiators further noted that requiring loan holders to track postmark dates would be unduly burdensome. The negotiators for loan holders and servicers suggested that the Department retain the requirement for the income information to be ''received'' by the annual deadline provided to the borrower, but add a five-day ''grace period'' to the deadline. After further discussion, the Department and the non-Federal negotiators agreed that information submitted by a borrower should be considered to have been received by the deadline if it is received by the loan holder or the Secretary within 10 days after the deadline date.

Some non-Federal negotiators for borrowers asked the Department to consider limiting the amount of interest that is capitalized if a borrower repaying under the IBR plan fails to provide required income information within 10 days after the annual deadline. The Department declined to consider this recommendation, noting that it may result in significant costs to the Federal government. However, the Department is continuing to examine these likely costs and invites further comments on this proposal.

Some non-Federal negotiators representing borrowers also noted that under the statute and current regulations, if a borrower who is repaying under the IBR plan is determined to no longer have a partial financial hardship or chooses to stop making income-based payments, the ''maximum'' monthly amount the borrower is required to pay is the monthly amount that would be required under a standard repayment plan with a 10-year payment period, calculated based on the amount of the borrower's eligible loans that were outstanding at the time the borrower selected the IBR plan (''permanent standard amount''). Because the law and regulations provide that the permanent standard amount is the maximum amount a borrower is required to pay, the non-Federal negotiators asked the Department to consider amending the regulations to allow for a smaller permanent standard payment amount, as the conversion to a 10-year standard plan monthly payment amount may present a hardship for some borrowers.

The Department declined to consider this proposal, noting that the Department interprets the statutory reference to the ''maximum'' required payment amount, which is also reflected in current regulations, as a protection to ensure that a borrower's monthly payment amount under the IBR plan never exceeds the amount that would be required under a standard repayment plan with a 10-year repayment period. Accordingly, the permanent standard payment amount is the monthly payment amount that would be required under a 10-year standard repayment plan, calculated based on the amount of the borrower's eligible loan debt at the time the borrower selected the IBR plan. Without this provision, the formula used to calculate the required monthly payment during periods of partial financial hardship could result in a monthly payment that exceeds the amount that would be required under a 10-year standard repayment plan.

The Department further noted that since a borrower loses partial financial hardship status at the point the partial financial hardship payment formula results in a monthly payment that equals or exceeds the payment amount that would be required under a standard repayment plan with a 10-year repayment period, providing a permanent standard payment amount lower than that amount would mean that some borrowers who no longer have a partial financial hardship could have a lower monthly payment amount than some borrowers in a partial financial hardship status. This result would be contrary to the intent of the IBR plan.

The Department disagreed with the proposal from some non-Federal negotiators representing loan holders and servicers that would have required loan holders either to prevent the conversion of borrower's payment amount to the permanent standard amount or remediate the consequences of such a conversion if the loan holder received the required information by the deadline provided to the borrower and the borrower was determined to continue to have a partial financial hardship. Some of the other non-Federal negotiators also expressed concerns about this approach, noting in particular that the proposal did not explain what would constitute ''remediation.''

The Department believes that if the information a borrower is required to provide is received within 10 days after the annual deadline, the loan holder must ensure that the borrower's monthly payment amount is not converted to the permanent standard amount and that unpaid interest is not capitalized. The proposed regulations reflect this approach. The proposed regulations also provide that if the new calculated monthly PFH payment amount is less than the borrower's previously calculated monthly PFH payment amount, the loan holder must apply any excess payment amount resulting from payments that the borrower continued to make at the higher monthly PFH payment amount in accordance with the normal IBR payment application rules, unless the borrower requests that the excess amount be applied to future payments. This requirement would ensure that any excess payment is not applied as a pre-payment to advance the next monthly payment due date (unless that is what the borrower requests), as that would lengthen the period before the borrower becomes eligible for public service loan forgiveness under § 685.219.

The Department believes that the proposal from the non-Federal negotiators to allow loan holders to grant forbearance to cover a borrower's past due payments under certain circumstances was more complex than necessary and overly broad. The proposal would have allowed for forbearance to be granted to any borrower who was delinquent in making payments at the time the loan holder made a determination that resulted in a monthly PFH payment amount of zero, regardless of whether the borrower's income information was received by the annual deadline.

However, the Department believes it is appropriate to allow forbearance under limited circumstances for borrowers whose income information is not received until more than 10 days after the annual deadline and who are delinquent at the time the new monthly PFH payment amount is determined, if the new monthly PFH payment amount is zero or is less than the borrower's previously scheduled monthly PFH payment amount. This may indicate that the borrower's financial circumstances have worsened, which may have contributed to the borrower's delinquency and may have caused the borrower's failure to provide the required information in a timely manner.

The Department also believes it is appropriate under these circumstances to limit capitalization of interest accrued during forbearance to the interest that had been previously capitalized at the end of the prior annual payment period. For example, if a forbearance is granted to cover a five-month period of delinquency that began three months before the end of the borrower's prior annual payment period and continued for two months after the end of that annual payment period, the interest that accrued during the first three months of the forbearance period (i.e., prior to the conversion of the borrower's payment to the permanent standard amount) would remain capitalized.

The proposed regulations for the Direct Loan Program also clarify that if a borrower continues to make payments at the previously scheduled monthly PFH payment amount after the borrower's payment has been converted to the permanent standard amount as a result of the borrower's income information being received more than 10 days after the annual deadline date, those payments would continue to count as qualifying payments for purposes of the public service loan forgiveness program under § 685.219, provided that the payments otherwise meet the public service loan forgiveness program eligibility requirements. Without this provision, payments that the borrower continued to make at the previously calculated monthly PFH payment amount might not qualify for public service loan forgiveness purposes because they were for less than the scheduled permanent standard payment amount.

Some of the non-Federal negotiators suggested that many issues related to current processes for submission of income documentation could be addressed by allowing borrowers to submit documentation electronically, or by establishing an electronic process for loan holders to obtain the necessary income information directly from the IRS. The Department agreed to explore such options in the future but noted that privacy issues associated with the electronic submission of documents and restrictions on the release of information by the IRS to FFEL Program loan holders would have to be addressed.

Some of the non-Federal negotiators requested that the Department modify the current IBR requirement for borrowers to provide written consent for the IRS to disclose the borrower's AGI to the loan holder by listing other options for providing income information and emphasizing those other options as preferable. The negotiators noted that although the Department previously provided guidance allowing loan holders to accept a signed copy of the borrower's most recently filed tax return as an alternative to the borrower's written consent, current regulations continue to require borrowers to submit written consent, and there are often lengthy delays in getting the borrower's income information from the IRS.

The non-Federal negotiators also asked the Department to reconsider its policy guidance that a copy of the borrower's most recently filed Federal income tax return submitted to support the borrower's PHF determination must include the borrower' signature. The non-Federal negotiators noted that many borrowers file electronic tax returns that do not include a signature, and they said that failure to include a signature on the copy of the tax return that a borrower sends to his or her loan holder is a frequent reason for delays in processing a borrower's income information.

Finally, the non-Federal negotiators recommended that the regulations related to documentation of income be revised to allow loan holders to require borrowers to provide alternative documentation of income (that is, documentation other than the borrower's AGI) at any time, rather than only in circumstances when the borrower's AGI is unavailable or does not reasonably reflect the borrower's current income.

The Department agreed that the income documentation requirements could be simplified by amending the regulations to require borrowers to provide documentation, acceptable to the Secretary or the loan holder, of the borrower's AGI. Moreover, the Department noted that the IRS consent process is no longer used for Direct Loan borrowers repaying under the IBR or ICR plans, as discussed under the section ''Other Changes to the ICR–B Plan.'' Acceptable documentation of a borrower's AGI could include a copy of the borrower's most recently filed Federal income tax return or a tax transcript obtained from the IRS by the borrower.

In addition, the Department agreed that a copy of the borrower's most recently filed tax return need not include the borrower's signature. The Department announced this change in an electronic announcement posted on the Department's Information for Financial Aid Professionals Web site on April 13, 2012.

The Department disagreed with the recommendation that the regulations be amended to allow loan holders to disregard AGI and require borrowers to provide alternative documentation of income under any circumstances. Section 493C(a)(3) of the HEA specifically provides that the determination of a borrower's partial financial hardship status is based, in part, on the borrower's AGI. The Department believes that the greater flexibility in the proposed regulations related to income documentation would eliminate some of the issues loan holders are currently experiencing with documenting a borrower's AGI.

Some non-Federal negotiators representing loan holders and servicers asked the Department to add a requirement for a married borrower, under certain circumstances, either to provide the FFEL Program loan holder with the spouse's authorization for the loan holder to access information in NSLDS concerning the eligible loans of the borrower's spouse or to provide other acceptable documentation of the spouse's eligible loans. Under the terms and conditions of the IBR plan, if a borrower is married and files a joint Federal income tax return, and if the borrower's spouse has loans that are eligible for repayment under the IBR plan, the combined eligible loan debt of the borrower and spouse is used to determine whether a borrower has a partial financial hardship. However, this additional information would be required only from married borrowers who both have eligible loans and who file joint tax returns, and only if the loan holder does not hold at least one of the spouse's eligible loans. If a loan holder does not hold at least one of the spouse's eligible loans, the loan holder may not access NSLDS to obtain information about the spouse's loans without the spouse's authorization. The loan holders noted that this spousal authorization is included on the IBR request form that borrowers must complete to request the IBR plan but stated that the requirement for spousal loan information should be included in the regulations to make it clear that for certain married borrowers, eligibility for the IBR plan cannot be determined without information about the spouse's eligible loans. The Department agreed with the non-Federal negotiators' recommendation and modified the proposed FFEL Program IBR regulations accordingly.

Proposed regulations in § 682.215 require written notification to a borrower regarding information for subsequent periods of a borrower's partial financial hardship and forgiveness eligibility. A non-Federal negotiator representing loan servicers requested that the language be revised to reflect that the notification may be provided either electronically or in writing to enable servicers to use electronic practices to communicate the notification requirements to borrowers. Some negotiators asked the Department to clarify the extent of the loan holder's flexibility to electronically provide notifications to borrowers to ensure that servicers were not limited solely to using electronic communication for borrowers that provide affirmative consent in accordance with the E–Sign Act, but may also use electronic communication for borrowers who have agreed to the use of email communication. The Federal negotiators responded that a revision of the proposed regulations was unnecessary because the Department has previously interpreted (including in previous regulatory preambles) the term ''in writing'' to include through electronic means. The Department acknowledged that servicers may use electronic methods to provide the notifications under § 682.215. The Department follows the same practice in the Direct Loan Program.

IBR Loan Forgiveness Notifications

Statute: Section 493C(b)(7) provides that the Secretary will cancel the outstanding remaining balance on a borrower's loan if the borrower has participated in the IBR plan and met other requirements during a repayment period not to exceed 25 years.

Current Regulations: Current regulations in § 685.221(f) and § 682.215(f) reflect the IBR loan forgiveness provision in section 493C(b)(7) of the HEA. Under current § 682.215(g)(4), after a FFEL Program loan holder is notified by the guaranty agency that a borrower qualifies for IBR loan forgiveness, the loan holder must inform the borrower of that determination and provide the borrower with information on the required handling of the forgiveness amount. The current Direct Loan Program regulations do not include a provision in § 685.221 comparable to the FFEL Program provision in § 682.215(g)(4).

Proposed Regulations: The proposed regulations would make the following changes in § 685.221(f) and § 682.215(g):

- In both the Direct Loan and FFEL programs, the regulations would clarify that the Secretary or the loan holder determines when a borrower has met the requirements for loan forgiveness and that the borrower is not required to submit a request for loan forgiveness.
- The proposed regulations would provide for the Secretary or the loan holder to send the borrower a written notice no later than six months prior to the anticipated date that the borrower will meet the loan forgiveness requirements. This notice would explain that the borrower is approaching the date he or she is expected to qualify for loan forgiveness, would remind the borrower that he or she must continue to make scheduled monthly payments, and would provide general information on the current treatment of the forgiveness amount for tax purposes, including instructions to contact the IRS for more information.
- Current § 682.215(g)(4) would be redesignated as (g)(5) and would be revised to clarify that when a loan holder notifies a borrower that the borrower has been determined eligible for loan forgiveness, the borrower must be provided with information on the current treatment of the forgiveness amount for tax purposes and directed to the IRS for more information.
- A provision comparable to the current FFEL provision in § 682.215(g)(4), with the changes just described, would be added to the Direct Loan Program regulations in § 685.221(f). A provision comparable to the current FFEL provision in § 682.215(g)(7) would also be added. Proposed § 685.221(f)(5)(iii)(C) would state that the Secretary returns to the sender any payment received on a loan after loan forgiveness has been granted.

The changes just described would also be incorporated in the proposed regulations for the ICR–A and ICR–B repayment plans.

Reasons: Some of the non-Federal negotiators asked the Department to clarify in the regulations that the loan holder or the Secretary determines when a borrower qualifies for loan forgiveness and that the borrower is not required to track his or her own progress toward meeting the loan forgiveness requirement or submit an application for forgiveness. The non-Federal negotiators also stated it would be helpful to borrowers to give them advance notice that they are approaching the date when they will qualify for loan forgiveness and that borrowers should be made aware in advance of the current treatment of the loan forgiveness amount for tax purposes. The Department agreed with the non-Federal negotiators and modified the proposed regulations accordingly.

Borrowers Who Leave the IBR Plan

Statute: Section 493C(b)(8) of the HEA provides that a borrower who is repaying a Direct Loan or an FFEL program loan under the IBR plan may elect at any time to terminate repayment under the plan and repay the loan under the standard repayment plan.

Current Regulations: Section 685.221(d)(2) of the Direct Loan program regulations and § 682.215(d)(2) of the FFEL program regulations provide that if a borrower repaying under the IBR plan elects to leave the plan, the borrower must pay under the standard repayment plan. The regulations specify that the borrower's monthly repayment amount will be recalculated based on the time remaining under the maximum 10-year repayment period using the outstanding amount of the borrower's loans when the borrower discontinues paying under the IBR plan or, for Direct Consolidation and Federal Consolidation Loan borrowers, based on the time remaining under the applicable repayment period for the amount of the consolidation loan and the balance of other student loans that is outstanding at the time the borrower stops paying under the IBR plan.

Proposed Regulations: Proposed § 685.221(d)(2)(i)(A) would clarify that the time remaining under the maximum 10-year repayment plan applies to Direct Subsidized, Direct Unsubsidized, and Direct PLUS loans. Proposed § 685.221(d)(2)(i)(B) and § 682.215(d)(2)(ii) would also clarify that a Consolidation Loan borrower's recalculated payment when the borrower elects to leave the IBR plan is based on the time remaining under the applicable repayment period that was initially determined when the Consolidation Loan was made.

Sections 685.221(d)(2)(ii) and 682.215(d)(3) of the proposed regulations would provide that a borrower who leaves the IBR plan and is placed on the standard repayment plan may change to a different repayment plan after making one monthly payment under the standard repayment plan. Under the proposed regulations, the single payment made under the standard repayment plan could include a smaller payment amount paid under a reduced payment forbearance agreement with the loan holder or the Secretary.

Reasons: The statutory maximum 10-year repayment period applies only to Direct Subsidized, Direct Unsubsidized and Direct PLUS Loans. The initial applicable repayment period for a Consolidation Loan is based on the total amount of the loans consolidated plus other student loans that were not consolidated but which the borrower asked be considered in establishing the consolidation loan repayment period. As a result, the reference in current regulations to ''the balance of other student loans'' being a factor in establishing the recalculated payment of an existing Consolidation Loan is incorrect and has been deleted. During the negotiated rulemaking sessions, the Department explained that this change is a technical correction that was submitted to the Department prior to the negotiated rulemaking process.

With regard to borrower options for changing to a different repayment plan after leaving the IBR plan and being placed on the standard repayment plan, the Department initially proposed to incorporate into regulations its current policy that a borrower leaving the IBR plan must make one full monthly payment under the 10-year standard repayment plan or the standard consolidation repayment plan, as applicable, before the borrower would be permitted to select another repayment plan. Some non-Federal negotiators argued that the requirement for one full standard repayment amount could represent a hardship to a borrower that could precipitate a delinquency or impede the borrower's ability to enter another, more flexible repayment plan, such as the extended repayment plan. In response to these concerns, the Department has proposed regulations that would require the borrower to make one monthly payment while under a standard repayment plan, but allow for that payment to be for a lesser amount than the full scheduled monthly payment amount under a reduced payment forbearance agreement with the Secretary or the loan holder.

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action would have an annual effect on the economy of more than $100 million because the availability of the ICR–A repayment plan is estimated to cost approximately $2.1 billion over 10 years. Therefore, this proposed action is economically significant and subject to review by OMB under section 3(f) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action. The agency believes that the benefits justify the costs.

We have also reviewed these regulations pursuant to Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor their regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

We emphasize as well that Executive Order 13563 requires agencies ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' In its February 2, 2011, memorandum (M–11–10) on Executive Order 13563, the Office of Information and Regulatory Affairs within the Office of Management and Budget emphasized that such techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only upon a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis below, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered. Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

The Need for Regulatory Action

The Department is responsible for administration of the Federal student loan programs authorized by title IV of the HEA. Federal student loans are a crucial element in providing important opportunities for Americans seeking to expand their skills and earn postsecondary degrees and certificates. One of the Department's goals is to ensure that its regulations promote a transparent and consistent administration of title IV programs. Borrowers should be able to easily understand their rights, responsibilities, and options. Sometimes statutory revisions or Administration priorities require the Department to revise its policies and regulations. With these proposed regulations, the Department seeks to enhance the income-driven repayment options available to borrowers so student loan debt would be manageable and students would continue to pursue postsecondary education that makes sense for them. In addition, the Department hopes to improve the total and permanent disability process to increase efficiency and consistency in the treatment of borrowers.

The passage of the SAFRA Act (Pub. L. 111–152) ended the origination of new FFEL program loans and amended the statutory provisions governing the IBR plan so that the discretionary income caps and loan forgiveness eligibility periods would be reduced effective July 1, 2014, for new borrowers who choose the IBR repayment plan.

Student loan indebtedness and unrelenting increases in tuition costs have become major issues not only in the media but at the kitchen table in millions of American households. In light of recent economic conditions, many Americans remain worried that postsecondary education is becoming, or has become, unaffordable for themselves and their children. Recognizing that fear of unmanageable student loan indebtedness may discourage potential students from seeking postsecondary education, Congress enacted, as part of SAFRA, President Obama's proposal to lower IBR student loan payment caps and offer forgiveness after 20 years of qualifying payments for new borrowers in 2014.

Concerned about those students now graduating and entering the workforce, President Obama proposed the Pay As You Earn initiative. This proposal would revise the ICR repayment plan in the Direct Loan program to reflect the statutory changes made to IBR by SAFRA. Eligible borrowers (new borrowers on or after October 1, 2007, with new loans in 2012) would be able to take advantage of the 10 percent income caps in the fall of 2012 instead of waiting until 2014 for the statutory changes to IBR.

In order to achieve the goals of the President's Pay As You Earn initiative and provide maximum benefit to borrowers, the Secretary is proposing to make improvements to the ICR repayment plan while implementing the statutory IBR changes. The proposed revisions would offer eligible borrowers lower payments and loan forgiveness after 20 years of qualifying payments. As discussed earlier in this section, income-based repayment options may encourage higher borrowing and potentially introduce an unintended moral hazard, especially for borrowers enrolled at schools with high tuitions and with low expected income streams, but the proposed changes should not substantially increase the potential moral hazard when compared to existing IBR or ICR plans. Table 2 summarizes the differences in eligibility between the existing and proposed IBR and ICR programs.

TABLE 2—SUMMARY OF EXISTING AND PROPOSED IBR AND ICR PLANS

	Current IBR	Proposed revised IBR (with 07/01/2014 statutory changes)	Proposed ICR–A	Current ICR (proposed ICR–B)
Loan Program and Eligible Borrowers	• Direct Loan Program • FFEL Program	• Direct Loan Program only. • Only new borrowers as of July 1, 2014: ○ Must have no outstanding Direct Loan or FFEL balance as of July 1, 2014 or on the date a new Direct Loan is received after July 1, 2014	• Direct Loan Program only. • Only new borrowers in 2008 who receive a Direct Loan disbursement in 2012 or later: ○ Must have no outstanding Direct Loan or FFEL balance as of October 1, 2007 or on the date a new Direct Loan or FFEL Program loan is received after October 1, 2007; *and* ○ Must receive a disbursement of a Direct Loan on/after October 1, 2011, or receive a Direct Consolidation Loan based on an application received on/after October 1, 2011. • FFEL borrowers may qualify through consolidation into the Direct Loan Program.	• Direct Loan Program only. • FFEL new borrowers in 2008 may qualify through consolidation into the Direct Loan Program.
Graduate/Professional PLUS Loans eligible	Yes	Yes	Yes	Yes.

TABLE 2—SUMMARY OF EXISTING AND PROPOSED IBR AND ICR PLANS—Continued

	Current IBR	Proposed revised IBR (with 07/01/2014 statutory changes)	Proposed ICR–A	Current ICR (proposed ICR–B)
Parent PLUS Loans eligible?	No	No	No	No.
Consolidation Loans that repaid Parent PLUS Loans eligible	No	No	No	Yes.
Partial Financial Hardship Required	Yes	Yes	Yes	No.
Partial Financial Hardship Definition	10-year standard payment amount on eligible loans (annual amount owed) exceeds 15% of difference between AGI and 150% of poverty line amount.	10-year standard payment amount on eligible loans (annual amount owed) exceeds 10% of difference between AGI and 150% of poverty line amount.	10-year standard payment amount on eligible loans (annual amount owed) exceeds 10% of difference between AGI and 150% of poverty line amount.	N/A.
Forgiveness Period	25 years of qualifying payments/months of economic hardship deferment.	20 years of qualifying payments/months of economic hardship deferment.	20 years of qualifying payments/months of economic hardship deferment.	25 years of qualifying payments/months of economic hardship deferment.
Estimated Borrowers Eligible for Participation (2012–2021 cohorts in millions) *	1.53	1.03	1.67	0.39.

* **Note:** While the figures represent the 2012–2021 cohorts, the numbers only apply to those cohorts eligible for the particular program. For example, the 1.03 million for the Proposed Revised IBR only includes eligible new borrowers after July 1, 2014.

The Department's current process for considering applications for total and permanent disability discharges on student loans has also been reviewed for efficiencies and improved consistency in response to concerns raised by the Department and external parties. Borrowers and advocates particularly have cited the application process and monitoring period requirements as problematic. The proposed revisions would address these problems by requiring borrowers to submit applications for disability discharges to the Secretary, ensuring rejected applicants receive a thorough explanation of the reasons for their rejection and adequate information about their options, and simplifying the income verification process during the three-year monitoring period. The proposed regulations would also eliminate the necessity for FFEL lenders and guaranty agencies to evaluate disability discharge applications and ensure that the disability discharge application process is expedited for veterans as well.

Beyond those details, Executive Order 12866 emphasizes that ''Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' In this case, there is indeed a compelling public need for regulation. The Secretary recognizes the growth in the number of students enrolled in college, the ongoing rise in tuition, the resulting increased need for student loans, and the increased difficulty in repaying them. The Secretary's goal in regulating is to provide borrowers with maximum repayment options to support debt management and improve the process for considering applications for disability discharges on Federal student loans.

The steep increase in the cost of tuition in America has been well documented. According to data collected by the Department's National Center for Education Statistics (NCES), the cost of tuition, room and board for full-time students at America's 4-year public and private non-profit institutions rose by over 500 percent between 1980 and 2010. Even if controlled for inflation, there was still a 140 percent increase.[1] As chart 1A shows, this is a steep increase in a short amount of time. The average published tuition and fees at 4-year public universities increased by 8.3 percent between the 2010–2011 and 2011–2012 academic years, according to College Board.[2] The tuition pinch is not limited to undergraduate studies. Chart 1B shows that the average price of tuition and required fees at graduate and professional schools has doubled since 1988, even when adjusted for inflation.[3]

Note:

Disaggregated data for private, for-profit institutions was not available for any year prior to 2006 so it was not included in the charts).

Despite the increasing cost of tuition, enrollment at universities has continued to climb. A large and growing percentage of jobs in the U.S. economy now require a college degree. As a result, more students are enrolling in college each year with hopes of building a career, and there has been a large influx of non-traditional students as older workers return to school to learn new skills or change careers.

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[1] *This percentage was calculated by the Department using data collected from* Thomas D. Snyder and Sally A. Dillow, *Digest of Education Statistics 2010,* (pgs. 493–495) Education (U.S. Department of Education, April 2011), *http://nces.ed.gov/pubs2011/2011015.pdf.*

[2] *Trends in College Pricing 2011, Table 4A: Average Tuition and Fees in Current Dollars, 1981–82 to 2011–12* (College Board Advocacy and Policy Center, nd.), *http://trends.collegeboard.org/college_pricing/report_findings/indicator/Tuition_Fees_Over_Time.*

[3] Snyder and Dillow, *Digest of Education Statistics 2010,* page 498.

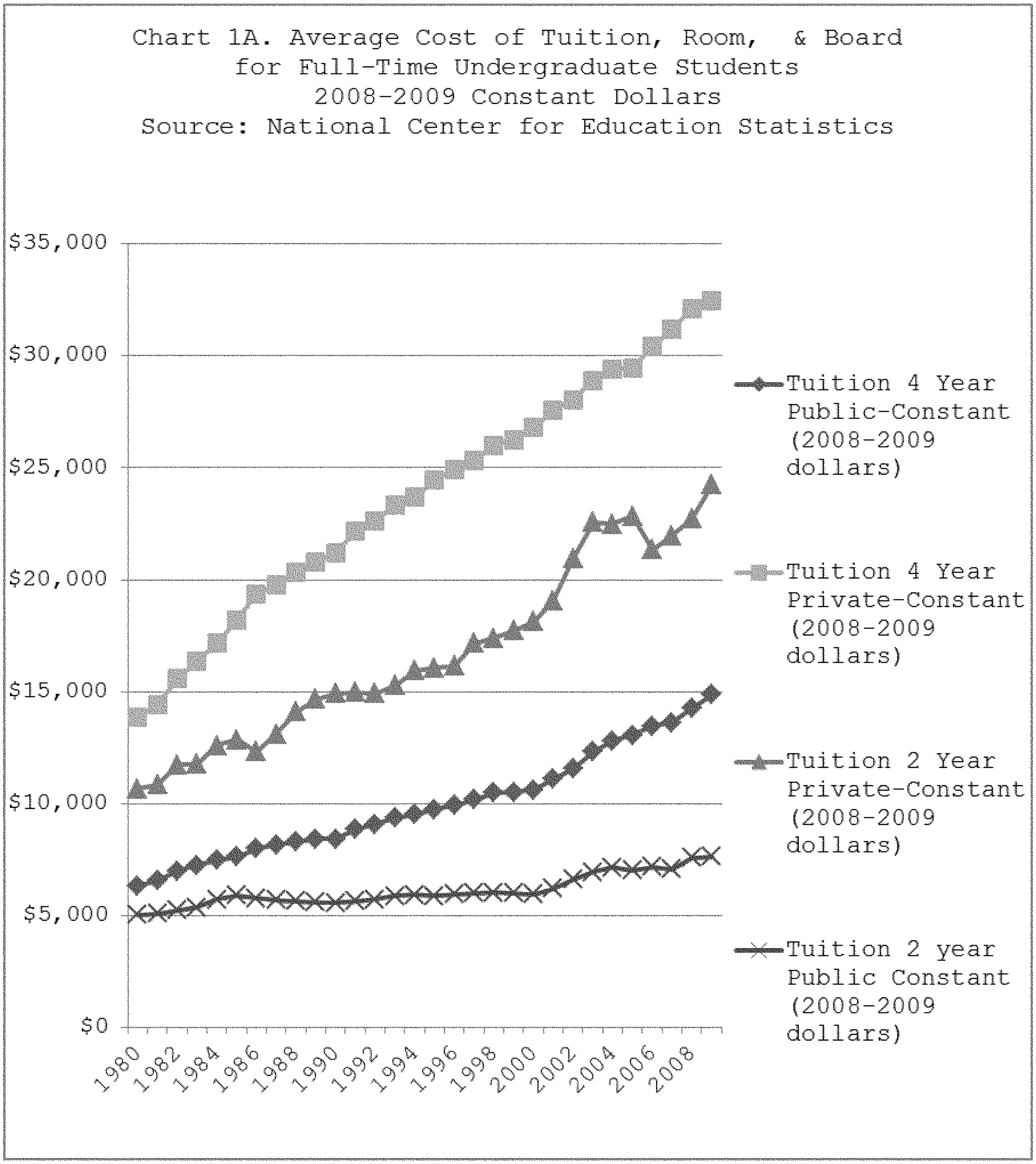
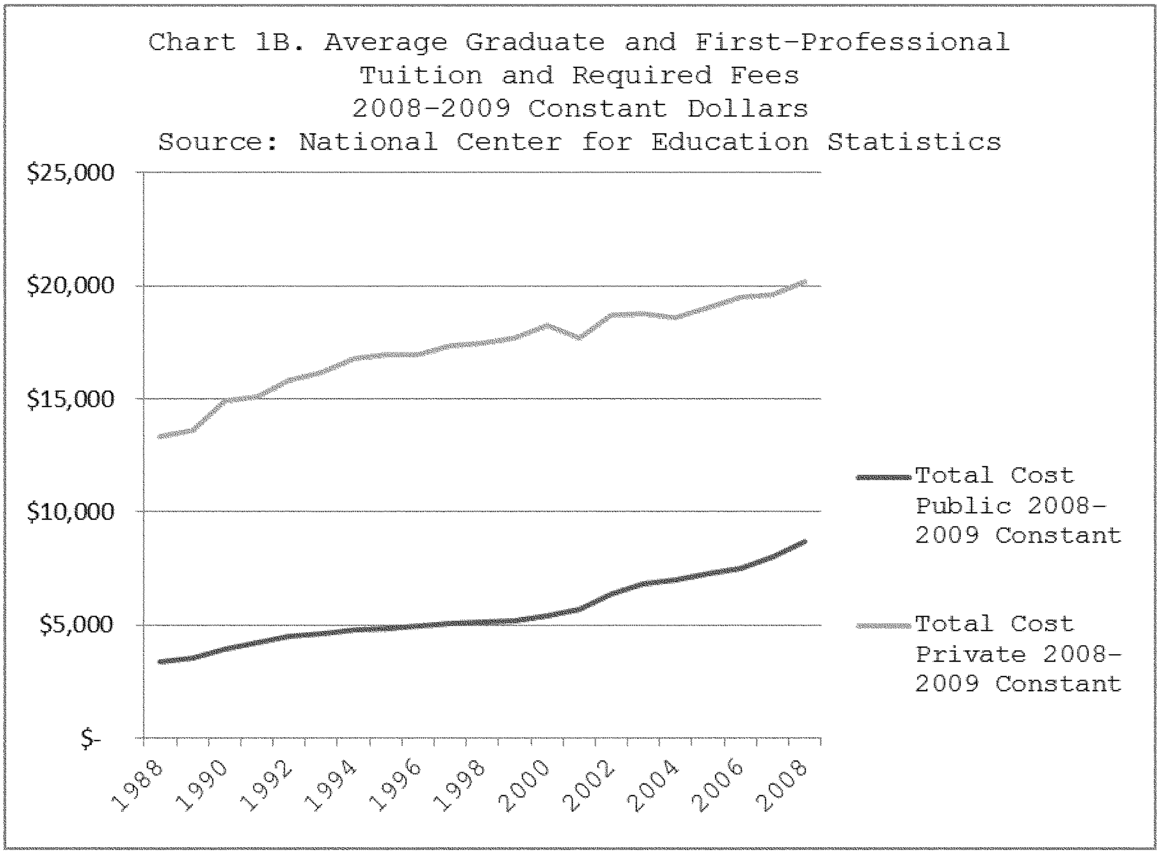


Chart 1A. Average Cost of Tuition, Room, & Board
for Full-Time Undergraduate Students
2008-2009 Constant Dollars
Source: National Center for Education Statistics
$35,000
$30,000
$25,000
$20,000
$15,000
$10,000
$5,000
$0
1980
1982
1984
1986
1988
1990
1992
1994
1996
1998
2000
2002
2004
2006
2008
Tuition 4 Year Public-Constant (2008-2009 dollars)
Tuition 4 Year Private-Constant (2008-2009 dollars)
Tuition 2 Year Private-Constant (2008-2009 dollars)
Tuition 2 year Public Constant (2008-2009 dollars)



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The combination of increased enrollment and rising tuition has contributed to a significant increase of student loan debt in America. This outstanding debt has grown as more and more students seek the benefits of postsecondary education and as students increasingly rely on Federal student loans. According to data collected by NCES, 34.9 percent of all undergraduates took out a Federal student loan in the 2007–2008 academic year [4] compared to 19.9 percent in the 1992–1993 academic year.[5]

While higher levels of student loan debt are indicative of troubling trends with respect to the cost of college, these higher levels simultaneously reflect increased levels of investment in the nation's human capital. These investments yield significant and demonstrable benefits not only for individuals but for the nation as well. For example, bachelor degree holders earn over 80 percent more than do high school graduates over the course of a lifetime. This difference can amount to about $1 million for an individual worker.[6] Moreover, college graduates also experience lower levels of unemployment, and shorter durations of unemployment, than those without a college degree. Additionally, students who complete college have substantially lower unemployment rates than high school graduates. According to May 2012 data from the Bureau of Labor Statistics, adult high school graduates have an unemployment rate of 8.1 percent compared to 3.9 percent for adults with a bachelor's degree. For the Nation, higher levels of educational attainment increase economic productivity and raise gross domestic product, among many other benefits.

For recent graduates with college degrees, their hard-earned diplomas will undoubtedly yield long-term benefits. However, even though the economy has begun to strengthen, many recent graduates are finding it challenging to obtain employment and garner wages at or near average levels. A March 2011 letter published by the Federal Reserve Bank of San Francisco, for example, highlighted that the unemployment rate of recent graduates has doubled over the past few years.[7] Even for recent graduates who obtain employment, prior research has shown that it can take several years for those entering the workforce during a recession to reach normal wage levels.[8] For these graduates and for borrowers who do not complete a degree, the need to begin repayment on their student loans can be especially daunting.

The proposed ICR and IBR plans would provide borrowers with improved income related payment management options. They would also encourage borrowers to honor their debt commitments by offering loan forgiveness after 20 years of qualifying payments in an income-related payment plan.

[4] Thomas D. Snyder and Sally A. Dillow, *Digest of Education Statistics: 2010,* (United States Department of Education, National Center for Education Statistics, April, 2011), *http://nces.ed.gov/programs/digest/d10/tables/xls/tabn354.xls.*

[5] Thomas D. Snyder, *Digest of Education Statistics*: *1995* (United States Department of Education, National Center for Education Statistics, October, 1995), *http://nces.ed.gov/programs/digest/d95/dtab309.asp.*

[6] Anthony P. Carnevale, Stephen J. Rose and Ban Cheah, *The College Payoff: Education, Occupations, Lifetime Earnings, pg. 3 (Georgetown University, The Georgetown University Center on Education and the Workforce), http://www9.georgetown.edu/grad/gppi/hpi/cew/pdfs/collegepayoff-complete.pdf.*

[7] Bart Hobijn, Colin Gardiner, and Theodor Wiles, *Recent College Graduates and the Labor Market,* March 21, 2011, *http://www.frbsf.org/publications/economics/letter/2011/el2011-09.html*.

[8] Philip Oreopoulos, Till von Wachter, and Andrew Heisz, *The Short- and Long-Term Career Effects of Graduating in a Recession: Hysteresis and Heterogeneity in the Market for College Graduates,* Economic (The National Bureau of Economic Research, April 2006), *http://www.nber.org/papers/w12159.*

In addition to implementing statutory changes in the IBR plan and revising the ICR plan, the proposed regulations would also seek to solve well-documented problems with the process for evaluating discharge applications. The current process by which borrowers apply for a discharge has led to inconsistencies in determining eligibility and created hardships for eligible borrowers who are unable to fulfill their monitoring period requirements. Currently, borrowers who have suffered a total and permanent disability that leaves them unable to fulfill their loan obligation contact the holders of their loans and apply for a discharge. Lenders have different processes and this has led to discrepancies in the way loan holders are processing and assessing borrowers' eligibility for total and permanent disability. Also, the current reporting requirements during the monitoring period have proved to be strenuous on borrowers with disabilities and many who may meet all other eligibility requirements are having their loans reinstated due to failure to meet the current reporting requirements.

The Secretary is proposing to revise the regulations governing disability discharges in the different title IV student loan programs to standardize the process. Under the proposed regulations, all discharge applications would be submitted directly to the Secretary. The Department's proposal eliminates the requirement that each of a borrower's loan holders (and guaranty agencies, in the FFEL program) review the borrower's disability discharge application. Through this process, the Secretary would ensure consistency in the administration of the disability discharge process. A more detailed analysis of these changes is provided in the *Significant Proposed Regulations section* of this preamble.

Executive Order 13563, Section 4, notes that ''Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.'' Consistent with this section of the Executive order, the Department is enhancing the information available to prospective and enrolled students, providing better guidance, and offering more feasible loan repayment options through these proposed regulations.

Discussion of Costs, Benefits, and Transfers

Consistent with the principles of Executive Orders 12866 and 13563, the Department has analyzed the impact of these regulations on students, businesses, the Federal government, and State and local governments. The analysis rests on the projected impact of the regulations. The benefits and costs are discussed below.

Income Contingent Repayment

The proposed revisions to the Income Contingent Repayment plan would cap payments for eligible borrowers at 10 percent of discretionary income divided by 12. This is a reduction from the current 15 percent cap and would be consistent with the statutory changes to IBR that become effective in 2014. Proposed ICR (ICR–A) would be available to eligible borrowers in the fall of 2012. A detailed breakdown of the proposed qualifications needed for participation in either plan is provided earlier in Table 2.

Accurately predicting or forecasting transfers or costs from the proposed ICR changes is difficult because they will depend heavily on borrower trends and participation. Traditionally, there has been low participation in ICR, and many participants were forced into ICR in order to consolidate defaulted loans. ICR–A may see an enrollment push, however, as a result of the publicity it could receive as part of the President's Pay As You Earn repayment initiative. Economic recovery will also play a large role. If the economy shows significant improvement and wage levels begin to rise, then borrowers whose salaries have increased significantly may opt to leave ICR for another repayment plan, particularly if they no longer qualify for partial financial hardship. The following examples and discussion will analyze the difference in payments for borrowers under ICR–B and ICR–A. ICR–B payments are calculated using the lesser amount of the amount borrowers would pay if you they repaid their loan in 12 years multiplied by an income percentage factor that varies with their adjusted gross income (AGI), or the difference between AGI and the applicable HHS poverty guideline amount, divided by 12. Borrowers can calculate what their payments would be under ICR–B on the Federal Student Aid Web site at (*http://studentaid.ed.gov/PORTALSWebApp/students/english/OtherFormsOfRepay.jsp*). ICR–A payments are calculated using 10 percent of the difference between the subject's AGI and 150 percent of the applicable HHS poverty guidelines amount, divided by 12 (ICR–A would require PFH for initial qualification so first year calculations will assume PFH).

Example 1: Susan is a single borrower living in Ohio with no dependents. She has an (AGI) of $28,000 and $25,000 in student loan debt. Susan currently has an interest rate of 6.8 percent. Under proposed ICR–B (the current ICR) calculations, Susan's monthly payment (first year) would be more than $190 a month. Under ICR–A, Susan's payments would be roughly $94 a month, almost $97 less. In total in the first year, Susan would pay $1,162 less, as illustrated in Chart 2A. Example 1 illustrates the change in monthly payments possible for a borrower with Susan's income and family size. If we assume that her discretionary income and family size remains the same over the life of the loan and she stays in ICR–A and makes twenty years of qualifying payments, she would pay $22,560 and would have a balance of $39,493 forgiven. This simplified example demonstrates one possible outcome for a hypothetical borrower and actual outcomes would depend on the borrower's income growth, family size, and repayment plan decisions. Across the pool of ICR–A borrowers, some would receive forgiveness and others would pay in full, and the combined effect of these outcomes leads to the estimated $2.1 billion cost of the proposal as described in the Net Budget Impacts section of this RIA.

Example 2: Jim also lives in Ohio but is married, the head of household and has two dependents. Jim has an AGI of $48,000, $25,000 in student loan debt and a 6.8 percent interest rate. Under ICR–A, Jim's first year payments would be almost $112 less per month than under proposed ICR–B (the current ICR), as displayed in Chart 2B below.

Chart 2A. Susan's first year payments under ICR–A and ICR–B (All figures rounded to nearest dollar)			Chart 2B. Jim's first year payments under ICR–A and ICR–B (All figures rounded to nearest dollar)	
Plan	Monthly	First year total	Monthly	First year total
Current ICR (ICR–B)	$191	$2,287	$251	$3,009
ICR–A	94	1,125	112	1,343
Difference	97	1,162	139	1,666

Example 3: In 2011, the average student finished undergraduate studies with around $23,000 in student loan debt. Chart 2C looks at how that borrower's first-year payments would measure under ICR–A and ICR–B if they started at different salary levels.

CHART 2C—FIRST YEAR PAYMENTS UNDER ICR–A & ICR–B

[$23,000 Debt, 6.8 percent interest rate, single]

AGI	$20,000	$25,000	$30,000	$35,000	$40,000	$45,000
Standard Repayment	$265	$265	$265	$265	$265	$265
ICR–B	147	164	183	197	210	223
ICR–A	27	69	110	152	194	235
Difference (ICR–B vs. ICR–A)	120	95	73	45	16	(12)

Chart 2C shows that the difference between ICR–B and ICR–A payments in the first year is more drastic at lower salary levels. A borrower entering into repayment with $23,000 worth of loans and a 6.8 percent interest rate would have lower monthly payments under ICR–A up to the $45,000 salary level. A borrower who leaves school with $23,000 in student loans and takes a job making $25,000 would have monthly payments that are $95 cheaper under ICR–A than ICR–B.

ICR–A would also offer loan forgiveness after 20 years of payments; the current ICR plan (proposed ICR–B) offers forgiveness after 25 years. Consequently, eligible borrowers may have five fewer years of payments under proposed ICR–A. The effects of this change would also depend on borrower trends, enrollment, and possibly the economy.

As mentioned earlier, the ability of recent graduates to find suitable employment may play a large role in determining the participation rate of ICR. The job struggles of new graduates have been well documented. However, 2011 graduates who were able to find employment saw an average starting salary of $51,171 according to the National Association of Colleges and Employers' fall 2011 Salary Survey.[9] The average single borrower entering repayment with a $50,000 salary and 6.8 percent interest rate would not qualify for ICR–A unless the borrower had around $24,500 or more in eligible debt. However, those borrowers who enter into lower paying jobs or struggle to find employment may benefit from participating in ICR–A.

Leaving ICR–B open to direct and eligible consolidation loan borrowers ensures that the majority of borrowers would have an income-driven payment option. This may be particularly important for borrowers employed in jobs eligible for public sector loan forgiveness after 10 years but who do not qualify for IBR or ICR–A. This would allow borrowers to choose which repayment plan is the best option for them. The formulas and calculators for the standard and fixed payment plans can be found at (*http://studentaid.ed.gov/PORTALSWebApp/students/english/OtherFormsOfRepay.jsp*).

CHART 2D—FIRST YEAR MONTHLY PAYMENTS UNDER ICR–B, STANDARD AND EXTENDED FIXED REPAYMENT PLANS

[$35,000 Debt, 6.8 percent interest rate, single]

AGI	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000
Standard	$403	$403	$403	$403	$403	$403	$403
Extended fixed (25 years)	243	243	243	243	243	243	243
ICR–B	300	319	339	356	356	359	377

For a single borrower with $35,000 in debt, a 6.8 percent interest rate, and an annual salary under $65,000, Chart 2D shows that ICR–B would provide for lower monthly payments during the first year of repayment than would the standard repayment plan but higher payments than the extended fixed repayment amounts. The annual recalculation of payments under current ICR (proposed ICR–B) takes current debt amounts into consideration and the payments would more than likely adjust.

All of the examples used above are only estimates. While these examples are able to paint a relatively clear picture of how the proposed regulations would affect individual borrowers' payments in a given year, they lack the scalability required to show an exact link to the overall budget impact because of the uniqueness of any borrower's circumstances. Initial

[9] National Association of Colleges and Employers, *Fall 2011 Salary Survey, http://www.naceweb.org/Press/Releases/Average_Salary_Offer_Rises_6_Percent_for_the_Class_of_2011.aspx.*

payments and payments over time would vary based on borrower behavior. ICR Borrowers may see their payments fluctuate because of marriage, pay raises, or children. As in IBR, under ICR–A borrowers are re-evaluated annually and payments may rise based on family size and AGI to the point they trigger a 10-year standard payment amount that, depending on the amount of the debt, may result in the borrower either repaying the debt in full before 20 years and receiving no forgiveness or leaving the plan entirely and receiving no forgiveness. Those borrowers who end up with lower payments would have more disposable income and possibly have a net positive impact on the economy. However, some borrowers would pay more money overall in order to have smaller payments up front.

There would also be other small costs and transfers associated with ICR–A. For those borrowers under partial financial hardship (PFH) with calculated payments less than $5 would not have to pay at all, while there is a $5 minimum payment under current ICR (proposed ICR–B).

Borrowers qualified for PFH would have $10 monthly payments if their calculated payments are greater than $5 but less than $10. There is no PFH determination under current ICR (proposed ICR–B).

Interest would be capped at 10 percent of the original principal balance at the time borrower enters proposed ICR–A compared to current ICR (proposed ICR–B) in which interest is capped at 10 percent of the original principal amount at the time the borrower entered repayment. This may or may not mean lower total loan debts. For married borrowers, joint AGI and eligible loan debt would be used only if the couple files a joint tax return under proposed ICR–A. Current ICR (proposed ICR–B) uses joint AGI and eligible loan debt regardless of filing status.

Income Based Repayment

The statutory changes to the Income Based Repayment Plan reduce the discretionary income payment cap to 10 percent and loan forgiveness period to 20 years for eligible borrowers, effective July 1, 2014. IBR participants may have lower payments as a result and may be able to take advantage of loan forgiveness. The PFH definition changes from when the 10-year standard payment amount on eligible loans (annual amount owed) exceeds 15 percent of the difference between AGI and 150 percent of the poverty line amount to 10 percent.

Accurately predicting or forecasting the transfers from these changes is particularly difficult because most of them would heavily depend on borrower trends. Economic recovery would also play a large role. If the economy shows significant improvement and wage levels begin to rise, then borrowers whose salaries have increased significantly may opt to leave IBR for another one of the repayment plans, particularly if they no longer qualify for partial financial hardship.

The following examples and discussion will analyze possible transfers for new borrowers under the 2014 implementation of the IBR revisions. Currently IBR payments are calculated by using 15 percent of the difference between 150 percent of the applicable HHS poverty guidelines and the borrower's AGI, divided by 12.[10] The proposed IBR repayment plan would use 10 percent of the difference between 150 percent of the applicable HHS poverty guidelines and the borrower's AGI, divided by 12.

Example 1: Susan is a single borrower living in Ohio with no dependents. She has an Adjusted Gross Income (AGI) of $28,000 and $25,000 in student loan debt. Susan currently has an interest rate of 6.8 percent. Under the current IBR calculations, Susan's monthly payment would be $141 a month in her first year. Under the proposed IBR calculations, Susan's first-year payments would be $94 a month, $47 less. Over the course of the year, Susan would pay $562 less, as displayed in Chart 3A.

Example 2: Jim also lives in Ohio but is married, the head of a household, and he has two dependents. Jim has an AGI of $48,000, and $25,000 in student loan debt with a 6.8 percent interest rate. Under the proposed IBR, Jim's first year payments would be almost $56 less per month, as displayed in Chart 3B below.

Plan	Chart 3A. Susan's payments under current and revised IBR (All figures rounded to nearest dollar): Monthly	Chart 3A: First year total	Chart 3B. Jim's payments under current and revised IBR (All figures rounded to nearest dollar): Monthly	Chart 3B: First year total
IBR (current)	$141	$1,687	$168	$2,014
IBR (revised)	94	1,125	112	1,343
Difference	47	562	56	671

Proposed IBR would also offer loan forgiveness after 20 years of repayment. Currently, forgiveness is given after 25 years. Eligible borrowers may have five fewer years of payments. The effects of this change would also depend on borrower trends, enrollment, and possibly the economy. The following discussion will look at how this change may affect a borrower.

Example 3: Jesse finishes college with $40,000 in student loan debt and a 6.8 percent interest rate. Jesse's loan would be repaid under an IBR plan based on partial financial hardship. Five years after entering repayment, Jesse gets married and has a daughter. He adds a second child after the seventh year in repayment. The charts and graph below demonstrates Jesse's payments under current and proposed IBR.

CHART 3C—JESSE'S PAYMENTS UNDER CURRENT AND REVISED IBR

Year(s) of repayment	1	2	3	4	5	6
Salary	$22,000	$22,000	$23,000	$23,000	$30,000	$30,000
Current IBR	66	66	78	78	17	17
Revised IBR	44	44	52	52	11	11
Monthly Payment Reduction	22	22	26	26	6	6

[10] *Repayment Plans and Calculators,* Government, n.d., *http://studentaid.ed.gov/PORTALSWebApp/students/english/OtherFormsOfRepay.jsp.*

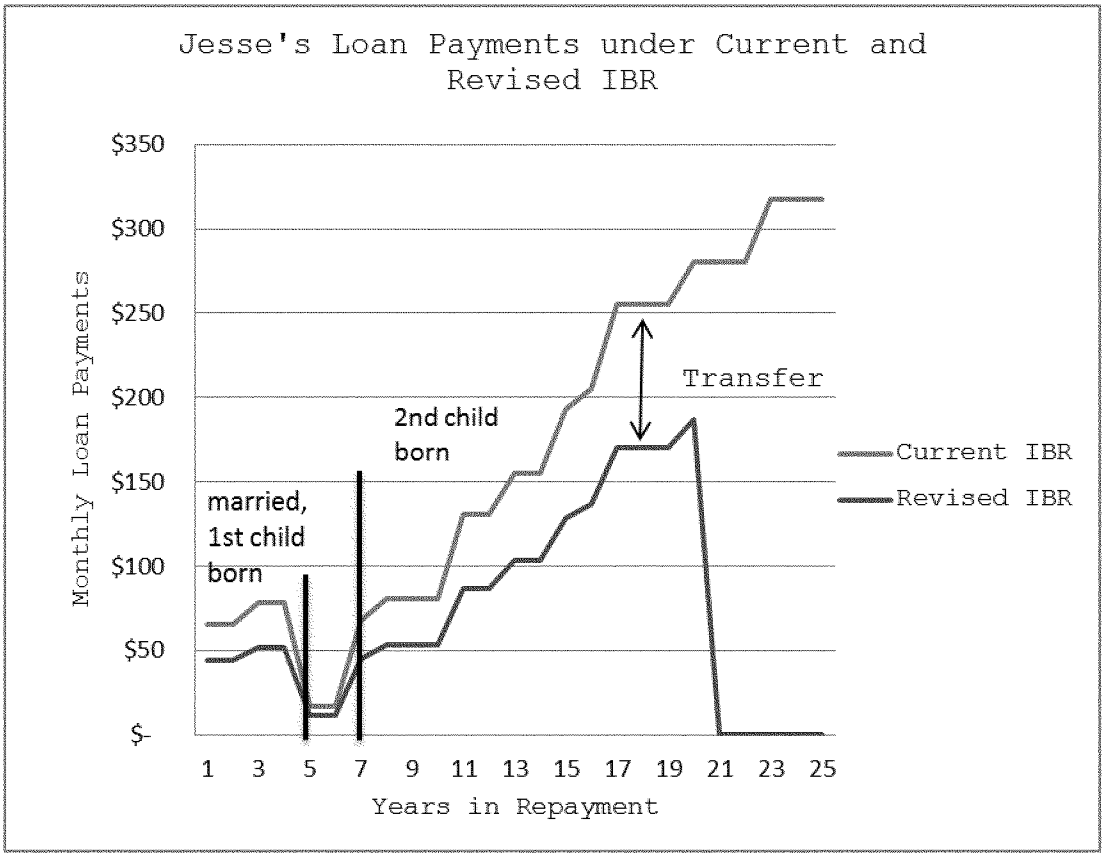
CHART 3C—JESSE'S PAYMENTS UNDER CURRENT AND REVISED IBR—Continued

Year(s) of repayment	1	2	3	4	5	6
Annual Payment Reduction	262	262	312	312	68	68
Family Size	1	1	1	1	3	3
Married/HOH	No	No	No	No	Yes	Yes

Year(s) of repayment	7	8	9	10	11	12	13
Salary	$40,000	$41,000	$41,000	$41,000	$45,000	$45,000	$47,000
Current IBR	68	80	80	80	130	130	155
Revised IBR	45	54	54	54	87	87	104
Monthly Payment Reduction	23	26	27	27	43	43	52
Annual Payment Reduction	271	321	321	321	521	521	621
Family Size	4	4	4	4	4	4	4
Married/HOH	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Year(s) of repayment	14	15	16	17	18	19
Salary	$47,000	$50,000	$51,000	$55,000	$55,000	$55,000
Current IBR	155	193	205	255	255	255
Revised IBR	104	129	137	170	170	170
Monthly Payment Reduction	52	64	68	85	85	85
Annual Payment Reduction	621	771	821	1,021	1,021	1,021
Family Size	4	4	4	4	4	4
Married/HOH	Yes	Yes	Yes	Yes	Yes	Yes

Year(s) of repayment	20	21	22	23	24	25
Salary	$57,000	$57,000	$57,000	$60,000	$60,000	$60,000
Current IBR	280	280	280	318	318	318
Revised IBR	187	....	....	....	....	....
Monthly Payment Reduction	93	280	280	318	318	318
Annual Payment Reduction	1,121	3,364	3,364	3,814	3,814	3,814
Family Size	4	4	4	4	4	4
Married/HOH	Yes	Yes	Yes	Yes	Yes	Yes



As demonstrated, Jesse would have substantially smaller payments under the proposed IBR plan, particularly as his income rises. The five-year difference in the forgiveness period alone would mean $18,000 less in payments. Overall, Jesse would pay back $28,000 less under the proposed IBR plan than the current one. This example assumes that Jesse remains qualified for PFH. Jesse's example is based on assumptions about a particular borrower and cannot be used to make large scale projections. Monthly payments would vary over the life of a loan based on many factors. If Jesse did not get married or have children, his payments would have been different.

Overall, the proposed IBR revisions would offer many benefits. Reduced income caps, PFH payment qualifications, and loan forgiveness periods may encourage more borrowers to acknowledge their loan debt and could possibly decrease the default rate. The savings that eligible borrowers could acquire via reduced payment amounts and loan forgiveness periods would allow borrowers to have more disposable income and would have a net positive impact on the economy. Some borrowers may initially pay more money overall however, in order to have lower payments up front.

The examples used above are all based on certain assumptions about particular borrowers and cannot accurately be expanded to project market level transfers or costs. As mentioned earlier, borrowers who no longer qualify for PFH may very well opt to leave IBR for another payment plan. The proposed regulations would allow a borrower to use forbearance and pay less than the standard payment when leaving IBR.

Total and Permanent Disability Discharge

The Department believes that the proposed streamlined total and permanent disability discharge process would provide many benefits to borrowers. The proposed regulations would—

- Simplify the process for the borrower;
- Establish a single point of contact for the borrower throughout the disability discharge process;
- Reduce the time needed to process applications;
- Provide more consistency in eligibility determinations;
- Provide more uniformity in the communications sent to borrowers throughout the process; and
- Ensure that all of a borrower's title IV loans that are eligible for a total and permanent disability discharge are discharged at the same time, reducing instances of ''straggler'' loans that the borrower may forget to include when applying for discharge of the borrower's other title IV loans.

By ensuring that denied applicants have adequate information about the reasons for their denial and their future options, borrowers would be able to make better informed decisions and possibly correct their applications if denial is a result of applicant error. This may reduce the number of technically eligible borrowers who fail to have their loans discharged. Increasing the number of discharged loans could lead to an increased transfer of funds to borrowers as they would not be required to make loan payments.

By developing an OMB approved form for income reporting purposes, the Secretary will simplify the post-discharge monitoring process and possibly reduce the number of otherwise eligible borrowers with disabilities who have their loans reinstated. Currently, a large proportion of discharged borrowers end up with their loans reinstated because of failure to submit adequate information during the post-discharge monitoring period. By reducing the number of borrowers with disabilities who have their loans reinstated for failure to provide income information, but who may be otherwise eligible, the Secretary would provide economic relief for many of the country's most vulnerable citizens.

In 2011, approximately 78,000 borrowers applied for a total and permanent disability discharge of 179,454 loans across the Direct, FFEL, and Perkins loan programs. The proposed total and permanent disability process will offer many benefits to borrowers with disabilities and possibly reduce the number of reinstatements. The surplus in applications and discharges that could occur as an incentive of the simplified process, would lead to a transfer of funds from the Federal government to borrowers by the way of debt elimination. Also, by allowing direct application to the Secretary, all applications would be held to the same standard. The chances for inconsistency in the review process would be drastically reduced. The elimination of multiple medical evaluations would relieve administrative burden on title IV providers and reduce the application review time.

Also, the Department believes that veterans would benefit if the changes proposed to the non-veterans total and permanent disability discharge also applied to the process for disability discharges based on VA documentation.

Borrowers with disabilities would benefit from the elimination of the requirement that a physician provide a letter requesting more time for the borrower to submit a total and permanent disability discharge application.

As noted, while the Department does believe that the proposed revisions would ultimately benefit truly eligible borrowers, it cannot accurately predict applicant behavior as a result.

Net Budget Impacts

The proposed regulations are estimated to have a net budget impact of $2.1 billion in subsidy cost over the 2012 to 2021 loan cohorts. Consistent with the requirements of the Credit Reform Act of 1990 (CRA), budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

These estimates were developed using the Office of Management and Budget's (OMB) Credit Subsidy Calculator. The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a "basket of zeros" methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used Government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these regulations. That said, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence of the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under Assumptions, Limitations, and Data Sources. Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: for-profit institutions (less than 2-year), 2-year institutions, freshmen/sophomores at 4-year institutions, juniors/seniors at 4-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior of borrowers in each category—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits.

Income Contingent Repayment

The budget impact in this package of regulations is related to the changes in the ICR plan. These proposed regulations, based on the President's Pay As You Earn initiative, create ICR–A, a new income-contingent option that mirrors the changes made to the IBR repayment plan by SAFRA. ICR–A allows new borrowers in FY 2008 or later with a new loan in FY 2012 or later who demonstrate a partial financial hardship to use an income contingent repayment plan based on 10 percent of their discretionary income and a 20-year forgiveness period. The terms and conditions of ICR–A are based on IBR, including the treatment of married borrowers and the timing of interest capitalization, except ICR–A maintains the cap on interest capitalization from existing ICR. The existing ICR plan which has a threshold based on the lesser of the 12-year amortization of the loan multiplied by an income percentage factor or 20 percent of discretionary income and a 25-year forgiveness period would remain available for those borrowers who do not qualify or choose ICR–A or IBR option because of timing, not qualifying for partial financial hardship, or individual preference. The availability of ICR–A, with its reduced income percentage and shorter forgiveness period, is estimated to cost $2.1 billion over the 2012 to 2021 loan cohorts.

To establish the baseline and to evaluate proposals related to the ICR and IBR plans, the Department uses a micro-simulation model consisting of borrower level data based on an extract of Direct Loan borrowers in ICR. Income and family size is projected for each borrower for 25 years using imputations developed by analyzing yearly changes in income and family size from the Current Population Survey. Interest and principal payments are calculated according to the regulations governing the ICR and IBR programs, and the payments are adjusted for the likelihood of deferment or forbearance; default and subsequent collection; prepayment through consolidation; death, disability, or bankruptcy; or Public Service Loan Forgiveness. The adjusted payment flows are aggregated by population and cohort and loaded into the Student Loan Model (SLM). The SLM combines the adjusted payment flows with the expected volume of loans in income-contingent repayment to generate estimates of Federal costs.

In evaluating the proposed changes to the ICR and IBR programs, the Department assumes that, if possible, income-contingent borrowers would elect the ICR–A plan given its more generous income and forgiveness provisions. Based on this, the Department estimates that between 2012 and 2021 approximately 1.67 million borrowers not already eligible for SAFRA IBR would be estimated to choose ICR–A. The availability of the ICR–A repayment plan results in an estimated average savings of $4,250 per borrower. Assuming all those in ICR–A remained in the plan, the Department estimates that approximately 13 percent would receive public sector loan forgiveness, 39 percent would receive forgiveness after twenty years of qualifying payments, and 48 percent would pay-off their balances. (Note: the budget estimate of $2.1 billion takes into account prepayment through consolidation, defaults, and death/

disability/bankruptcy discharges that lead to borrowers exiting the ICR program early). The actual number of borrowers receiving forgiveness will be significantly less than would be obtained by multiplying the 1.7 million borrowers estimate to take ICR by the above percentages since not all borrowers will remain in ICR. Currently, the Department estimates that approximately 400,000 borrowers from cohorts 2012 through 2021 would ultimately receive forgiveness. In general, those borrowers receiving forgiveness have higher balances as payments based on income are more likely to cover lower balances. Those receiving forgiveness have an average original balance of approximately $39,500 and receive forgiveness of approximately $41,000 as their payments tend to cover interest owed so they end up with balances forgiven close to the original debt.

As discussed above, when the assumption for loan forgiveness is increased as a result of a policy the cash flow impact is a reduction in principal and interest payments. The subsidy cost is derived from comparing the baseline payments to the policy payments (on a Net Present Value basis) and comparing the two resulting subsidy rates. The outlays are calculated by subtracting the new subsidy rate with the policy cash flows from the baseline subsidy rate and multiplying by the volume for the cohort. As stated above, compared to the baseline, the availability of the ICR–A repayment plan is estimated to cost approximately $2.1 billion for the cohorts from 2012 to 2021 as shown in Table 3.

TABLE 3—ESTIMATED OUTLAYS FOR COHORTS 2012–2021

Cohorts	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
Budget Authority	134	199	208	255	235	253	239	249	224	177	2,173
Outlays	114	191	208	253	235	246	234	254	218	178	2,132

Income Based Repayment

The proposed changes to the IBR program that implement the statutory changes in SAFRA are not expected to have a budgetary impact because they were incorporated into the budget baseline by SAFRA. The Department estimates that approximately one million new borrowers from the 2014 to 2021 cohorts would benefit from the changes to IBR made by SAFRA. The proposed regulations also include process clarifications related to the ultimate loan forgiveness and the timing of notices and annual certification. These changes are expected to improve the servicing for IBR borrowers and provide guidance before the first set of eligible borrowers reach the forgiveness point, but are not expected to have a budgetary impact.

Total and Permanent Disability

The proposed regulations would establish a single application process through the Department for borrowers seeking a total and permanent disability discharge of their Federal loans, specify requirements for more detailed information in total and permanent disability discharge denial letters, and modify the process and documentation requirements for the post-discharge monitoring period. This should simplify the point of contact for borrowers or the borrower's representative, eliminate straggler loans that do not receive a discharge along with the borrower's other loans because they are in a different program or with a different loan holder and the borrower does not apply for or receive a discharge, and improve consistency in eligibility determinations. Because the proposed regulations do not change the standard for determining disability or expand the pool of borrowers potentially eligible for discharge, there is no expected effect on the Federal student loan budget. The Department would continue to closely monitor the total and permanent disability discharge process and any significant changes in the frequency or magnitude of disability discharges would be reflected in future budget estimates.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the costs, benefits, and changes in annual monetized transfers as a result of the revisions to the ICR repayment plan as reflected in these proposed regulations. As discussed in the Net Budget Impacts section of this preamble, costs for policies affecting Federal student loans are calculated under credit reform scoring and reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. Under this approach, costs for a cohort are discounted at OMB provided rates to the cohort year of disbursement with the resulting outlays shown in Table 3. To generate the required single annualized cost, the Department then discounted those costs from the cohort years to 2012 at 7 percent and 3 percent, resulting in the $214 million and $216 million annualized figures presented in the following accounting statement. Expenditures are classified as transfers from the Federal Government to borrowers in the revised ICR repayment plan.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES AT 3 PERCENT AND 7 PERCENT DISCOUNT RATES

[In millions]

Category	Costs
Costs of compliance with paperwork requirements	$1.40 (7%) 1.41 (3%)
Category	**Transfers**
Annualized reduced payments to Federal Government from borrowers in ICR–A repayment plan	$214 (7%) 216 (3%)

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

• Are the requirements in the proposed regulations clearly stated?

• Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

• Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

• Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 682.209 Repayment of a loan.)

• Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

• What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Alternatives Considered

In the spirit of good governance, the Department carefully considers any regulatory action or revision to ensure that the final decision represents what the Department believes is the best feasible option. First and foremost, the Department considered whether or not negotiated rulemaking was necessary in this instance and concluded that the magnitude of the statutory and regulatory revisions to ICR, IBR, and the TPD process would require stakeholder input. Many of the regulatory alternatives proposed by non-federal negotiators and considered by the Department but ultimately rejected, were done so because of budgetary constraints. For example, non-Federal negotiators requested that the Department open ICR–A to all borrowers eligible for current ICR, but the Department declined because of the proposal's significant cost but did agree to retain full borrower access to the ICR–B plan so that all borrowers would have access to a ''income-driven'' repayment plan. Nonetheless, the Department carefully worked with the non-federal negotiators on every issue to address all concerns possible and was able to gain consensus from the non-federal negotiators the proposed regulations. A more in-depth analysis of these discussions and decisions are documented preamble and a brief summary of the major discussions is listed below.

• The Department originally proposed requiring borrowers who choose to leave the ICR–A plan to make at least one payment under the standard repayment plan before selecting a different repayment plan, as IBR borrowers are required to do under § section 493C(b)(8) of the HEA but after further discussion and deliberation, the Department modified the proposed ICR–A regulations to reflect the same regulatory approach to changing repayment plans that applies to borrowers repaying under the existing ICR plan (the proposed ICR–B).

• The Department considered a proposal to cap the amount of interest and fees that may be charged to borrowers under both the ICR plans (including the proposed ICR–A plan) and IBR at 150 percent of the loan principal amount but determined that the Secretary does not have the authority under the HEA to stop charging interest to borrowers under the ICR or IBR plans after the amount of accrued interest has reached a certain percentage of the loan principal.

• Some of the non-Federal negotiators suggested that many issues related to the current processes for submission of income documentation could be addressed by allowing borrowers to submit documentation electronically, or by establishing an electronic process for loan holders to obtain the necessary income information directly from the IRS. The Department agreed to explore such options in the future but noted that privacy issues associated with electronic submission of documents and restrictions on the release of information by the IRS to FFEL Program loan holders would have to be addressed.

• After a lengthy discussion about AGI verification in regards to IBR, the Department agreed that the income documentation requirements could be simplified by amending the regulations to require borrowers to provide documentation, acceptable to the Secretary or the loan holder, of the borrower's AGI. Acceptable documentation of a borrower's AGI could include a copy of the borrower's most recently filed Federal income tax return or a tax transcript obtained from the IRS by the borrower. In addition, the Department agreed that a copy of the borrower's most recently filed tax return need not include the borrower's signature. The Department disagreed with the recommendation that the regulations be amended to allow loan holders to disregard AGI and require borrowers to provide alternative documentation of income under any circumstances. Section 493C(a)(3) of the HEA specifically provides that the determination of a borrower's partial financial hardship status is based, in part, on the borrower's AGI.

• The Department initially proposed to incorporate into regulations its current policy that a borrower leaving the IBR plan must make one full monthly payment under the 10-year standard repayment plan or the standard consolidation repayment plan, as applicable, before the borrower would be permitted to select another repayment plan. After a lengthy discussion with non-Federal negotiators and internal debate, the Department proposed regulations that require the borrower to make one monthly payment while under a standard repayment plan but allow for that payment to be for a lesser amount than the full scheduled monthly payment amount under a reduced payment forbearance agreement with the Secretary or the loan holder. The non-Federal negotiators agreed with this proposal.

• After non-Federal negotiators voiced their concerns about borrower's representatives not being included in the full TPD process, the Department added a paragraph to the proposed regulations for all of the Title IV student loan programs stating that the term ''borrower'' includes a borrower's representative, if applicable. Under the proposed regulations, any notice sent to a borrower must also be sent to the borrower's representative if the borrower has one. In addition, both the borrower and the borrower's representative may provide notifications and information in connection with the borrower's total and permanent disability discharge. The Department also added language to the Perkins Loan, FFEL, and Direct Loan program regulations providing that an attorney could be a borrower's representative.

• Some non-Federal negotiators recommended that the suspension of collection activity also include a suspension of payments collected from borrowers through administrative wage garnishment (AWG) and the Treasury Offset Program (TOP). The Department did not agree. Borrowers applying for total and permanent disability discharges are, by definition, unable to work and earn money. Therefore, AWG would not be an issue for these borrowers. With regard to TOP, the Department reiterated its current policy on stopping TOP offsets. The submission of a total and permanent disability discharge application does not, in and of itself, demonstrate that a borrower is eligible for a total and permanent disability discharge. The Department or guaranty agency may, however, stop or reduce TOP offsets during this period if it believes such action is warranted in the borrower's particular circumstances.

• The Department declined a proposal from non-Federal negotiators representing guaranty agencies that would require that guaranty agencies receive copies of the total and permanent disability discharge applications. Under the proposed regulations, guaranty agencies and lenders would not conduct medical reviews of disability discharge applications. Therefore, there is no need for lenders or agencies to receive the applications.

- Initially, the Department proposed shifting the three-year period during which the borrower would have to provide income information to three calendar years (January 1st to December 31st) after the discharge was granted. The Department proposed this approach because it would allow borrowers to meet the income documentation requirement by submitting tax returns for each calendar year after the discharge but after non-federal negotiators objected to this proposal on the grounds that it would lengthen the post-discharge monitoring period, the Department abandoned this proposal.
- Non-Federal negotiators proposed that the Department tie the definition of ''permanent and total disability'' to the Social Security standard and accept a statement of Social Security disability or SSI payments as proof that borrowers meet the reinstatement period requirements. The Department rejected the request to tie the Department's total and permanent disability definition to the Social Security standard but amended the language to allow for the submission of documentation of eligibility for Social Security disability benefits as supporting documentation for the OMB approved form that the Department will be developing for earnings verification during the three year monitoring period.

Regulatory Flexibility Act Certification

Initial Regulatory Flexibility Analysis

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations are concerned with the relationship between certain Federal student loan borrowers and the Federal government, with some of the provisions modifying the servicing and collections activities of guaranty agencies and other parties. The Department believes that the entities affected by these proposed regulations do not fall within the definition of a small entity. The U.S. Small Business Administration Size Standards define ''for-profit institutions'' as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000, and defines ''non-profit institutions'' as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 674.61, 682.215, 682.402, and 685.213 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Discussion

Proposed §§ 674.61, 682.215, 682.402, and 685.213 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Total and Permanent Disability Discharge Application Process Based on a Physician's Certification (§§ 674.61(b)(2), 682.402(c)(2) and 685.213(b))

The proposed regulations would revise §§ 674.61(b)(2) and 682.402(c)(2) of the Perkins Loan and FFEL program regulations to require Perkins Loan and FFEL borrowers to apply directly to the Department for total and permanent disability discharges. In the Direct Loan program, borrowers would continue to apply directly to the Department for total and permanent disability discharges, as they do under the current Direct Loan program regulations.

Under the proposed total and permanent disability discharge process, if a Perkins Loan program school or FFEL lender is contacted by a borrower intending to apply for a total and permanent disability discharge, the school or lender would provide the borrower with the information needed to apply to the Department for the discharge. Under the current regulations, when a borrower has loans held by two or more loan holders, the borrower must complete and submit a separate total and permanent disability application for each holder. Under the proposed streamlined process, a borrower would submit one total and permanent disability discharge application to the Department, eliminating the need for borrowers to submit separate discharge applications to each of their loan holders. We determined that in 2011 the number of total and permanent disability applications was as follows:

Year	Program	Number of borrowers	Number of loans
2011	Direct Loans	29,777	65,823
2011	FFEL Loans	48,518	114,040
2011	Perkins Loans	95	95
		78,390	179,958

Under currently approved OMB 1845–0065—Discharge Application: Total and Permanent Disability, the average amount of time for the borrower to complete and submit an application is estimated to be 30 minutes (0.5 hours) per application. The proposed regulations provide that a borrower with a single loan holder must still provide the Secretary with a single total and permanent disability discharge application for all the affected title IV, HEA program loans held by that holder. However, under the proposed regulations, borrowers with multiple loan holders would no longer have to complete and submit multiple total and permanent disability discharge applications to each separate loan holder, but instead will submit a single application to the Secretary. Under currently approved OMB 1845–0065, there are 30,000 respondents annually with 30,000 responses (applications) annually times 0.5 hours to yield a total burden of 15,000 hours to borrowers. Information from the 2011 award year indicates that the number of borrowers applying for total and permanent disability discharges has increased to 78,390 borrowers on 179,958 title IV, HEA loans. Using the 2011 number of loan applications, the burden would have expanded to 89,979 hours (179,958 times 0.5 hours equal 89,979 hours).

The burden analysis for these proposed regulations estimates the incremental increase from the previous annual rate of 30,000 borrowers and 30,000 affected loans to the 2011 basis of 78,390 borrowers and 179,958 affected loans, or an incremental increase of 48,390 borrowers (78,390 borrowers in 2011 less 30,000 borrowers already accounted for in the annual estimate) and 149,958 loans (179,958 loans in 2011 less 30,000 loans already accounted for in the annual estimate).

We estimate that half or 24,195 of the borrowers (48,390 divided by 2) have all of their 24,195 title IV, HEA loans held by single holders. Therefore, the burden associated with the group of borrowers with single holders is an increase of 12,098 burden hours (24,195 times 0.5 hours per application). We estimate that the other half of the borrowers or 24,195 (48,390 divided by 2) have multiple holders for their 125,763 title IV, HEA loans (179,958 affected loans in 2011 less the 30,000 already accounted for in the annual estimate, less 24,195 held by single holders). The proposed regulations require borrowers requesting a total and permanent disability discharge to submit a single TPD application to the Department even when the borrower has multiple loans from multiple loan holders. Therefore, the total remaining number of loans with multiple holders would be 24,195 (78,390 borrowers less 30,000 borrowers (respondents) in the currently approved information collection (OMB 1845–0065.v.4, less 24,195 borrowers with single holders) times 0.5 hours per application equal 12,097 hours of burden associated with the loans held by multiple holders. As a result, the overall annual burden would increase from 15,000 hours to 39,195 hours, a net increase of 24,195 burden hours, that is due primarily to the fact that over time the population of borrowers seeking total and permanent disability discharges has grown from 15,000 to 78,390 per year. This significant increase in application volume increases the total burden. The effect of the single application portion of the proposal kept the burden from increasing from 15,000 burden hours (currently approved amount) to 89,979 hours of burden, preventing an additional 50,784 hours of burden to individuals (179,958 applications times 0.5 hours equals 89,979 less 39,195 hours, the revised new amount of burden).

Under the proposed regulations, lenders and guaranty agencies would no longer perform a number of functions in the total and permanent disability discharge process. Lenders and guaranty agencies would no longer: distribute the Discharge Application: Total and Permanent Disability application, receive the completed and submitted total and permanent disability applications, review the completed and submitted total and permanent disability application forms, evaluate the application forms, request additional information necessary to complete or resolve open issues regarding the applications, review and evaluate supplemental information provided by the applicants, as well as make a determination whether the application supports the conclusion that the borrower is totally and permanently disabled.

Proposed §§ 674.61(b)(2) and 682.402(c)(2) would require institutions that participate in the Perkins Loan program and FFEL program loan holders to provide borrowers seeking a total and permanent disability discharge with information needed for the borrower to notify the Secretary. Since this is likely to be a highly automated process, we estimate that the average amount of time to provide a borrower with the required referral information to take 0.03 hours (2 minutes) per request. Under the currently approved burden analysis in OMB 1845–0019 for the Perkins Loan program, there are 31 hours of burden attributed to this regulation (62 respondents with 62 responses times 0.5 hours per response). Information from the 2011 award year indicates that the current annual number of Perkins Loan borrowers applying for total and permanent disability discharge has increased from an average of 62 to 95 borrowers. Under the proposed regulations, we estimate that the required information to notify the Secretary would take 0.03 hours (2 minutes) per borrower request. At the current burden rate that would have been 48 hours of burden, however, at the estimated notification rate of 0.03 hours per borrower the total burden is 3 hours (95 borrowers times 0.03 hours). While the number of affected Perkins Loan borrowers increased, this is a reduction in burden of 28 hours under OMB Control Number 1845–0019.

Section 682.402 does not contain any burden attributed to the regulation for the total and permanent disability discharge collection of information, nor is there burden attributable to the application process other than that which impacts the borrower completing the application. In the 2011 award year, our data indicate that there were 48,518 FFEL borrowers who applied for total and permanent disability discharges on 114,040 loans. Of the total 48,518 borrowers, 18,078 borrowers applied for discharge of 38,742 FFEL loans that were held by the Department, and 30,440 borrowers applied for discharge of 75,298 FFEL loans that were not held by the Department.

Under the current regulations, we estimate that providing the total permanent disability discharge application and all the other related review and determination processes would take 0.5 hours per application, thus creating 15,220 hours of burden.

Under proposed § 682.402(c)(2), the holder only provides information to the borrower telling the borrower how to notify the Secretary. Under the proposed regulations, we estimate that the required information to notify the Secretary would take 0.03 hours (2 minutes) per borrower request. At the current burden rate that would have been 15,220 hours of burden, however, at the estimated notification rate of 0.03 hours per borrower the total burden is 913 hours (30,440 borrowers times 0.03 hours). While the burden on non-Federal holders was not previously estimated, we have established that the estimate would have been 15,220 hours (30,440 times 0.5 hours per total and permanent disability discharge application). Under the proposed process the burden is reduced to 913 burden hours, an abatement of 14,307 burden hours; however, this is not a burden reduction since the current burden had not been previously established. Instead, an increase of 913 hours would be added to OMB Control Number 1845–0020.

As noted earlier, the proposed regulations would revise §§ 674.61(b)(2) and 682.402(c)(2) of the Perkins Loan and FFEL regulations to require Perkins and FFEL borrowers to apply directly to the Department for total and permanent disability discharges. In the Direct Loan Program, borrowers would continue to apply directly to the Department for total and permanent disability discharges, as they do under the current Direct Loan regulations.

Under proposed §§ 674.61(b)(2)(v)–(viii), 682.402(c)(2)(iv)–(viii), and 685.213(b)(3), a Perkins Loan, FFEL, or Direct Loan borrower must submit the total and permanent disability discharge application certified by a physician to the Department within 90 days of the date of the physician's certification. After receiving the total and permanent disability discharge application, the Department notifies the borrower's title IV loan holders that the Department has received the application. This notification directs the borrower's loan holders to either suspend collection activity or to maintain the suspension of collection activity on the borrower's title IV loans. If the application is incomplete, the Department requests the missing information from the borrower or the physician who certified the application.

The proposed changes would not constitute a change in burden for the borrowers because the application process remains virtually the same. However, since the borrower is directed to obtain the application form approved by the Secretary from the Department rather than from the institution in the case of a Perkins loan, or the lender in the case of a FFEL loan, the burden associated with the streamlined total and permanent disability discharge application process is transferred to the Department.

Changes to the Total and Permanent Disability Discharge Application form would need to be made. The Total and Permanent Disability Discharge Application form currently in use would expire on February 28, 2015. Final regulations implementing these provisions would be effective July 1, 2013. A revised Total and Permanent Disability Discharge Application form associated with OMB Control Number 1845–0065 will be submitted for OMB review by November 1, 2012, thereby ensuring that the public has an opportunity to provide comment upon the newly revised form that will be available for use on or about the effective date of the final regulations.

Under proposed §§ 674.61(b)(7)(iii), 682.402(c)(7)(iii), and 685.213(b)(8)(iii), during the three-year period following a discharge of a title IV loan based on total and permanent disability, the borrower must provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on an OMB approved form that would be available by the time that these regulations become effective. The form would require a certification from the borrower, and would require the borrower to submit documentation to support the certification available to the borrower. The documentation may include income tax returns, documentation of eligibility for Social Security disability benefits, or other documentation that supports the borrower certification.

The proposed regulations do not specify the content of the form but, as with all OMB-approved forms, the form would be made available for public comment as part of the OMB forms clearance process.

Collectively, the proposed regulatory changes reflected in §§ 674.61 and 682.402 would increase burden by 40,080 hours. The burden in OMB Control Number 1845–0065 would increase from 15,000 to 39,195. The burden in OMB Control Number 1845–0019 would decrease by 28 hours from 31 hours to 3 hours. The burden in OMB Control Number 1845–0020 would increase by 913 hours.

Income-Based Repayment Plan

Proposed §§ 682.215(e)(2) and 685.221(e)(2)—Eligibility documentation, verification, and notifications.

Under proposed § 682.215(e)(2), a FFEL loan holder, after making a determination that a borrower has a partial financial hardship to qualify for the IBR plan for the year the borrower initially selects the plan and for any subsequent year that the borrower has a partial financial hardship, would send the borrower a written notification that would include the following information: the borrower's scheduled monthly payment amount, and the time period during which that monthly payment amount will apply (annual payment period); information about the requirement for the borrower to annually provide income information (and, in some cases for married FFEL program borrowers, information about the eligible loans of the borrower's spouse) and certify family size, if the borrower chooses to remain on the IBR plan after the initial year on the plan, an explanation that the borrower will be notified in advance of the date by which the loan holder must receive this information; an explanation of the consequences if the borrower does not annually provide the required information; and information about the borrower's option to request, at any time during the borrower's current annual payment period, that the loan holder recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the monthly payment amount is recalculated based on the borrower's request, the loan holder would send the borrower a written notification that includes the borrower's new calculated monthly payment amount and the other information described above.

Using the most recent monthly reports on IBR applications, we examined the number of loans being repaid under IBR that are serviced by the Title IV Additional Servicers (TIVAS). We determined that 71 percent of all of the non-defaulted FFEL loans are held by the Department (and serviced by the TIVAS), with the remaining 29 percent being held by commercial for-profit and not-for-profit holders. Applying these same percentages to the IBR participation data we obtained from the Department's TIVAS, we estimated that the annualized estimated number of commercially held loans being repaid under IBR as 290,268 for the basis of this burden assessment. However, our data does not allow us to further disaggregate this number into the affected entities grouped under Public entities, Private-Not for Profit entities, and Proprietary entities. We estimate that the required notifications above would be highly automated and thus projected an average of 0.08 hours (5 minutes) of burden per IBR applicant, thus 23,221 hours of burden (290,268 times 0.08 hours) of increased burden are added as a new information collection under OMB Control Number 1845–NEWA.

Additional proposals under § 682.215(e) place further notification requirements on loan holders for subsequent years which are outside the scope of this burden analysis and would require future burden analysis.

Loan Forgiveness Processing and Payment

Proposed § 682.215(g) under the FFEL program, would clarify that the loan holder determines when a borrower has met the requirements for loan forgiveness and that the borrower is not required to submit a request for loan forgiveness.

The proposed regulations provide for the loan holder to send the borrower a written notice no later than six months prior to the anticipated date that the borrower would meet the loan forgiveness requirements. This notice would explain that the borrower is approaching the date he or she is expected to qualify for loan forgiveness, would remind the borrower that he or she must continue to make scheduled monthly payments, and would provide general information on the current treatment of the forgiveness amount for tax purposes, including instructions to contact the IRS for more information.

Current § 682.215(g)(4) (redesignated as § 682.215(g)(5)) would be revised to clarify that when a loan holder notifies a borrower that the borrower has been determined eligible for loan forgiveness, the borrower must be provided with information on the current treatment of the forgiveness amount for tax purposes and directed to the IRS for more information.

The loan holder determines when a borrower qualifies for loan forgiveness and does not require the borrower to track his or her own progress toward meeting the loan forgiveness requirement and then submit an application for forgiveness. In this section, we are required to analyze and publish the estimated amount of burden that proposed regulations place on affected entities (other than the Federal government) as of the effective date of the implementation of the proposed regulation, (assuming that it would occur in the initial year that the final regulations are effective). However, since these additional proposed notification requirements occur 24.5 years after the first income-based repayment loans were placed into repayment (on or around 2031), they are outside the scope of this burden analysis.

Consistent with the discussions above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, the collections the Department will submit to the OMB for approval and public comment under the Paperwork Reduction Act, and the estimated costs associated with the information collections. The monetized cost of the additional burden on loan holders, using wage data developed using BLS data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $593,249, as shown in Chart 4. This cost was based on an hourly rate of $24.61. The monetized cost of the additional burden on students is $700,807 based on an hourly rate of $17.88.

CHART 4—SUMMARY OF ESTIMATED PAPERWORK BURDEN

Regulatory section	Information collection	OMB control number and estimated change in the burden	Estimated cost
674.61	This proposed regulatory section would require Perkins borrowers to apply directly to the Department for total and permanent disability discharges. Under the proposed regulations institutions would no longer distribute the Total and Permanent Disability Discharge Application, receive the completed form, review and evaluate the request, request supplemental information where indicated, evaluate the supplemental application, and make a determination whether the application supports the conclusion that the borrower is totally and permanently disabled.	OMB 1845–0019. The burden would decrease by 28 hours to 3 hours.	−$689
674.61, 682.102, and 685.213.	These proposed regulations would require borrowers who request an application for a total and permanent disability discharge of their title IV, HEA loans to request the application from the Department. Borrowers with multiple loans at multiple loan holders would only complete and submit a single TPD application to the Department.	OMB 1845–0065. A separate 60-day **Federal Register** notice will be published to solicit public comment. The burden would increase by 39,195 hours.	700,407
682.215	This proposed regulation would require FFEL loan holders, after making a determination that a borrower has a partial financial hardship to qualify for the IBR plan, to send the borrower for the initial year or any subsequent year, written information to include the scheduled monthly payment amount, the time period during which the monthly payment will apply, and other information.	OMB 1845–NEWA. This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit public comment. The burden would increase by 23,221 hours.	571,469
682.402	This proposed section would require FFEL loan holders to provide information to the borrower to notify the Secretary about their interest in applying for a total and permanent disability discharge.	OMB 1845–0020. The burden would increase by 913 hours.	22,469

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We have prepared an Information Collection Request (ICR) for OMB 1845–0019, OMB 1845–0020. In preparing your comments you may want to review the ICR, which we maintain in the Education Department Information Collection System (EDICS) at *http://edicsweb.ed.gov.* Click on ''Browse Pending Collections.'' We will prepare separate 60 day **Federal Register** notices for the proposed collection OMB 1845–0065 and a new information collection under OMB 1845–NEWA.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Under 5 CFR 1320.13 we have requested OMB to conduct its review of these collections of information on an emergency basis. We have asked OMB to approve the collections of information within 30 days after publication of these proposed regulations in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by August 6, 2012. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 674, 682, and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 25, 2012.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend 34 of the Code of Federal Regulations chapter VI as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh, unless otherwise noted.

2. Section 674.61 is amended by:

A. Revising paragraph (b).

B. Revising paragraph (c).

C. Revising paragraph (d).

The revisions read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

(b) Total and permanent disability as defined in § 674.51(aa)(1). (1) *General.* (i) A borrower's Defense, NDSL, or Perkins loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 674.51(aa)(1), and satisfies the additional eligibility requirements in this section.

(ii) For purposes of § 674.61(b), a borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a ''borrower'' or a ''veteran'' include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary.

(2) *Discharge application process for borrowers who have a total and permanent disability as defined in § 674.51(aa)(1).* (i) If the borrower notifies the institution that the borrower claims to be totally and permanently disabled as defined in § 674.51(aa)(1), the institution must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the borrower with the information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (b)(2)(ii)(C) of this section will end after 120 days and the collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans.

(iv) The borrower must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1).

(v) The borrower must submit the application described in paragraph (b)(2)(iv) of this section to the Secretary within 90 days of the date the physician certifies the application.

(vi) After the Secretary receives the application described in paragraph (b)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans that the Secretary has received a total and permanent disability discharge application from the borrower.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower, the borrower's representative, or the physician who provided the certification, as appropriate. The

Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (b)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives a disability discharge application, the Secretary sends a notice to the borrower that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of the total and permanent disability discharge application.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification supports the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the borrower is considered totally and permanently disabled as of the date the physician certified the borrower's application.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician certified the borrower's loan discharge application and directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to assign the loan to the Secretary.

(iv) The institution must assign the loan to the Secretary within 45 days of the date of the notice described in paragraph (b)(3)(iii) of this section.

(v) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the institution that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(6) of this section. Any payments received after the date the physician certified the borrower's loan discharge application are returned to the person who made the payments on the loan in accordance with paragraph (b)(8) of this section.

(vi) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the institution that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the institution under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the institution will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vii) If the borrower requests re-evaluation in accordance with paragraph (b)(3)(vi)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(3)(vi)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not available at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge application will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Receipt of new title IV loans or TEACH Grants after the date of the physician's certification.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(v) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed had the total and permanent disability discharge application not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(6)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(6)(i) of this section, the borrower must—

(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(6)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form approved by the Secretary.

(8) *Payments received after the physician's certification of total and permanent disability.* (i) If the institution receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary based on the Secretary's determination of eligibility for a total and permanent disability discharge, the institution must return the payments to the sender.

(ii) At the same time that the institution returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after it has been discharged due to a total and permanent disability unless the loan is reinstated in accordance with § 674.61(b)(6), or the Secretary directs the borrower otherwise.

(iii) When the Secretary discharges the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.

(c) *Total and permanent disability discharges for veterans.* (1) *General.* A veteran's Defense, NDSL, or Perkins loan will be discharged if the veteran is totally and permanently disabled, as defined in § 674.51(aa)(2).

(2) *Discharge application process for veterans who have a total and permanent disability as defined in § 674.51(aa)(2).* (i) If a veteran notifies the institution that the veteran claims to be totally and permanently disabled as defined in § 674.51(aa)(2), the institution must direct the veteran to notify the Secretary of the veteran's intent to submit an application for a total and permanent disability discharge to the Secretary; and provide the veteran with the information needed for the veteran to apply for a total and permanent disability discharge to the Secretary.

(ii) If the veteran notifies the Secretary of the veteran's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the veteran with the information needed for the veteran to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the veteran and notifies the lenders of the veteran's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the veteran that the suspension of collection activity described in paragraph (c)(2)(ii)(C) of this section will end after 120 days and collection will resume on the veteran's title IV loans if the veteran does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the veteran fails to submit an application for a total and permanent discharge to the Secretary within 120 days, collection resumes on the veteran's title IV loans.

(iv) The veteran must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary.

(v) The application must be accompanied by documentation from the Department of Veteran Affairs showing that the Department of Veteran Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(vi) After the Secretary receives the application and supporting documentation described in paragraphs (c)(2)(iv) and (c)(2)(v) of this section, the Secretary notifies the holders of the veteran's title IV loans that the Secretary has received a total and permanent disability discharge application from the veteran.

(vii) If the application is incomplete, the Secretary notifies the veteran of the missing information and requests the missing information from the veteran or the veteran's representative. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(2)(vi) of this section directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the veteran that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the veteran that the veteran's lenders will suspend collection activity on the veteran's title IV loans while the Secretary reviews the borrower's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of the total and permanent disability discharge application.* (i) If, after reviewing the veteran's completed application, the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the veteran and the veteran's lenders that the application for disability discharge has been approved. With this notification, the Secretary provides the effective date of the determination and directs each institution holding a Direct, NDSL, or Perkins Loan made to the veteran to discharge the loan.

(ii) The institution returns any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability to the person who made the payments.

(iii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the veteran or the veteran's representative, and the institution that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the institution under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) An explanation that the institution will notify the veteran of the date the veteran must resume making payments on the loan;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraphs (b)(1) through (b)(8) of this section, if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), but indicates that the veteran may be totally and permanently disabled as defined in § 674.51(aa)(1).

(d) *No Federal reimbursement.* No Federal reimbursement is made to an institution for discharge of loans due to death or disability.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

3. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.209 [Amended]

4. Section 682.209 is amended in paragraph (a)(6)(v)(C), by adding the words ''through 682.215(e)(1)(iii)'' between the citation ''682.215(e)(1)(i)'' and the word ''within''.

5. Section 682.215 is amended by:

A. In paragraph (b)(1)(i), adding the words ''the borrower's'' immediately after the words ''outstanding principal amount of''.

B. In paragraph (b)(1)(ii)(C), adding the words ''the borrower's'' immediately after the words ''outstanding principal amount of''.

C. In the first sentence of paragraph (b)(2), removing the words ''an income-based repayment plan'' and adding, in their place, the words ''the income-based repayment plan''.

D. Revising paragraph (b)(3).

E. In paragraph (b)(7), removing the words ''an income-based repayment plan'' and adding, in their place, the words ''the income-based repayment plan''.

F. In paragraph (b)(8), removing the words ''an income-based repayment plan'' and adding, in their place, the words ''the income-based repayment plan''.

G. In the introductory text of paragraph (c)(1), removing the words ''an income-based repayment plan'' and adding, in their place, the words ''the income-based repayment plan''.

H. Revising paragraph (d).

I. Revising paragraph (e).

J. Revising paragraph (f)(1)(i).

K. In paragraph (f)(1)(iii), adding the words ''for the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment'' at the end of the paragraph, immediately before the punctuation '';''.

L. In paragraph (f)(1)(iv), removing the words ''for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan'' immediately before the punctuation and word ''; or''.

M. In the first sentence of paragraph (f)(3)(i), removing the words ''a FFEL Consolidation Loan,'' and adding, in their place, the words ''an eligible FFEL Consolidation Loan,''.

N. In paragraph (f)(3)(iv), removing the words ''(f)(1) after qualifying for the income-based repayment plan'' immediately before the punctuation ''.'' and adding, in their place, the words ''paragraph (f)(1) of this section''.

O. Revising paragraph (f)(5).

P. Revising paragraph (g).

Q. Adding an OMB control number parenthetical following the section.

The revisions and addition read as follows:

§ 682.215 Income-based repayment plan.

* * * * *

(b) * * *

(3) If a borrower elects the income-based repayment plan, the loan holder must, unless the borrower has some loans that are eligible for repayment under the income-based repayment plan and other loans that are not eligible for repayment under that plan, require that all eligible loans owed by the borrower to that holder be repaid under the income-based repayment plan.

* * * * *

(d) *Changes in the payment amount.* (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan but the loan holder must recalculate the borrower's monthly payment. The loan holder also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as a result of the recalculation—

(i) The maximum monthly amount that the loan holder requires the borrower to repay is the amount the borrower would have paid under the FFEL standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans with that holder under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(2) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the FFEL standard repayment plan and the loan holder recalculates the borrower's monthly payment based on—

(i) Except as provided in paragraph (d)(2)(ii) of this section, the time remaining under the maximum 10-year repayment period and the amount of the borrower's loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Consolidation Loan, the time remaining under the applicable repayment period as initially determined under § 682.209(h)(2) and the total amount of that loan that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(3) A borrower who no longer wishes to repay under the income-based repayment plan and who is required to repay under the FFEL standard repayment plan in accordance with paragraph (d)(2) of this section may request a change to a different repayment plan after making one monthly payment under the FFEL standard repayment plan. For this purpose, a monthly payment may include one payment made under a forbearance that provides for temporarily accepting smaller payments than previously scheduled, in accordance with § 682.211(a)(1).

(e) *Eligibility documentation, verification, and notifications.* (1) The loan holder determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower elects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the loan holder requires the borrower to—

(i) Provide documentation, acceptable to the loan holder, of the borrower's AGI;

(ii) If the borrower's AGI is not available, or the loan holder believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, provide other documentation to verify income;

(iii) If the spouse of a married borrower who files a joint Federal tax return has eligible loans and the loan holder does not hold at least one of the spouse's eligible loans—

(A) Provide consent for the loan holder to access the National Student Loan Data System to obtain information about the spouse's eligible loans; or

(B) Provide other documentation, acceptable to the loan holder, of the spouse's eligible loan information; and

(iv) Annually certify the borrower's family size. If the borrower fails to certify family size, the loan holder must assume a family size of one for that year.

(2) After making a determination that a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower initially elects the plan and for any subsequent year that the borrower has a partial financial hardship, the loan holder must send the borrower a written notification that provides the borrower with—

(i) The borrower's scheduled monthly payment amount, as calculated under paragraph (b)(1) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(ii) Information about the requirement for the borrower to annually provide the information described in paragraph (e)(1) of this section, if the borrower chooses to remain on the income-based repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the loan holder must receive this information;

(iii) An explanation of the consequences, as described in paragraphs (e)(1)(iv) and (e)(7) of this section, if the borrower does not provide the required information;

(iv) An explanation of the consequences if the borrower no longer wishes to repay under the income-based repayment plan; and

(v) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the loan holder recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the loan holder recalculates the borrower's monthly payment amount based on the borrower's request, the loan holder must send the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(3) For each subsequent year that a borrower who currently has a partial financial hardship remains on the income-based repayment plan, the loan holder must notify the borrower in writing of the requirements in paragraph (e)(1) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (e)(3)(i) of this section. The notification must provide the borrower with—

(i) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the loan holder must receive all of the information described in paragraph (e)(1) of this section (annual deadline); and

(ii) The consequences if the loan holder does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (d)(1) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (b)(5) of this section.

(4) Each time a loan holder makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the loan holder must send the borrower a written notification that provides the borrower with—

(i) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (d)(1) of this section;

(ii) An explanation that unpaid accrued interest will be capitalized in accordance with paragraph (b)(5) of this section; and

(iii) Information about the borrower's option to request, at any time, that the loan holder redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the loan holder determines that the borrower again has a partial financial hardship, the loan holder must recalculate the borrower's monthly payment in accordance with paragraph (b)(1) of this section and send the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(5) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the income-based repayment plan, the loan holder must send the borrower a written notification that includes the information described in paragraph (e)(4)(iii) of this section.

(6) If a borrower who is currently repaying under another repayment plan selects the income-based repayment plan but does not provide the documentation described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section, or if the loan holder determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(7) The loan holder designates the repayment option described in paragraph (d)(1) of this section if a borrower who is currently repaying under the income-based repayment plan remains on the plan for a subsequent year but the loan holder does not receive the information described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section within 10 days of the specified annual deadline.

(8)(i) If the loan holder receives the information described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section within 10 days of the specified annual deadline, the loan holder must promptly determine the borrower's new monthly payment amount. If the loan holder does not determine the new monthly payment amount by the end of the borrower's current annual payment period, the loan holder must prevent the borrower's monthly payment amount from being recalculated in accordance with paragraph (d)(1) of this section and maintain the borrower's current scheduled monthly payment amount until the loan holder determines the new monthly payment amount.

(ii) If the new monthly payment amount is less than the borrower's previously calculated income-based monthly payment amount, the loan holder must make the appropriate adjustment to the borrower's account to reflect any payments at the previously calculated amount that the borrower made after the end of the most recent annual payment period. Notwithstanding the requirements of § 682.209(b)(2)(ii), unless the borrower requests otherwise the loan holder applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of § 682.215(c)(1).

(iii) If the new monthly payment amount is equal to or greater than the borrower's previously calculated income-based monthly payment amount, the loan holder does not make any adjustments to the borrower's account.

(9) If the loan holder receives the documentation described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (d)(1) of this section, the loan holder may grant forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(f) * * *

(1) * * *

(i) Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) of this section, including a monthly payment amount of $0.00, as provided in paragraph (b)(1)(ii) of this section;

* * * * *

(5) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the 25-year forgiveness period.

(g) *Loan forgiveness processing and payment.* (1) The loan holder determines when a borrower has met the loan forgiveness requirements under paragraph (f) of this section and does not require the borrower to submit a request for loan forgiveness. No later than 6 months prior to the anticipated date that the borrower will meet the loan forgiveness requirements, the loan holder must send the borrower a written notice that includes—

(i) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(ii) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(iii) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(2) No later than 60 days after the loan holder determines that a borrower qualifies for loan forgiveness, the loan holder must request payment from the guaranty agency.

(3) If the loan holder requests payment from the guaranty agency later than the period specified in paragraph (g)(2) of this section, interest that accrues on the discharged amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the holder must repay all interest and special allowance received on the discharged amount for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Secretary under this paragraph.

(4)(i) Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness under this section and must notify the holder of its determination.

(ii) If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period required under paragraph (g)(4)(i) of this section, pay the holder the amount of the forgiveness.

(5) After being notified by the guaranty agency of its determination of the eligibility of the borrower for loan forgiveness, the holder must, within 30 days—

(i) Inform the borrower of the determination and, if appropriate, that the borrower's repayment obligation on the loans is satisfied; and

(ii) Provide the borrower with the information described in paragraph (g)(1)(iii) of this section.

(6)(i) The holder must apply the payment from the guaranty agency under paragraph (g)(4)(ii) of this section to satisfy the outstanding balance on those loans subject to income-based forgiveness; or

(ii) If the forgiveness amount exceeds the outstanding balance on the eligible loans subject to forgiveness, the loan holder must refund the excess amount to the guaranty agency.

(7) If the guaranty agency does not pay the forgiveness claim, the lender will continue the borrower in repayment on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date the borrower's repayment obligation was suspended until a new payment due date is established. Unless the denial of the forgiveness claim was due to an error by the lender, the lender may capitalize any interest accrued and not paid during this period, in accordance with § 682.202(b).

(8) The loan holder must promptly return to the sender any payment received on a loan after the guaranty agency pays the loan holder the amount of loan forgiveness. (Approved by the Office of Management and Budget under control number 1845–NEWA.)

* * * * *

6. Section 682.402 is amended by:

A. Revising paragraph (c).

B. In paragraph (g)(1)(iv), removing the words ''certification of disability described in paragraph (c)(2) of this section'' and adding, in their place, the words ''notification described in paragraph (c)(3)(iii) or (c)(9)(ix) of this section in which the Secretary notifies the lender that the borrower is totally and permanently disabled''.

C. In paragraph (g)(2)(i), removing the punctuation and words '', or the lender determines that the borrower is totally and permanently disabled''.

D. Redesignating paragraphs (g)(2)(ii), (g)(2)(iii), and (g)(2)(iv) as paragraphs (g)(2)(iii), (g)(2)(iv), and (g)(2)(v), respectively.

E. Adding a new paragraph (g)(2)(ii).

F. In paragraph (h)(1)(i)(A), adding the punctuation and word '', disability,'' after the word ''death''.

G. In paragraph (h)(1)(i)(B), removing the words and punctuation ''disability, closed school,'' and adding, in their place, the words ''closed school''.

H. Revising paragraph (h)(1)(v).

I. In paragraph (h)(3)(iii)(A), adding the punctuation and word '', disability,'' after the word ''death''.

J. In paragraph (h)(3)(iii)(B), removing the words and punctuation ''disability, closed school,'' and adding, in their place, the words ''closed school''.

K. Revising paragraph (k)(2)(i).

L. Revising paragraph (k)(2)(ii).

M. In paragraph (k)(2)(iii), adding the words ''by the Secretary'' after the words ''is determined''.

N. In paragraph (k)(5)(ii), removing the words ''the guaranty agency makes a preliminary determination'' and adding, in their place, the words ''the Secretary makes a determination''.

O. Revising paragraph (r)(2).

P.. Revising paragraph (r)(3).

The revisions and additions read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(c)(1) *Total and permanent disability.* (i) A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 682.200(b), and satisfies the eligibility requirements in this section.

(ii) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower's loan discharge application is processed in accordance with paragraphs (c)(2) through (8) of this section.

(iii) For a veteran who is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c)(9) of this section.

(iv) For purposes of § 682.402(c)—

(A) A borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a ''borrower'' or a ''veteran'' include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary;

(B) References to ''the lender'' mean the guaranty agency if the guaranty agency is the holder of the loan at the time the borrower applies for a total and permanent disability discharge, except that the total and permanent disability discharge claim filing requirements applicable to a lender do not apply to the guaranty agency; and

(C) References to ''the applicable guaranty agency'' mean the guaranty agency that guaranteed the loan.

(2) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).* (i) If the borrower notifies the lender that the borrower claims to be totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the lender must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify the Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the borrower with the information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (c)(2)(ii)(C) of this section will end after 120 days and collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time;

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans, and the lender shall be deemed to have exercised forbearance of principal and interest from the date it suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

(iv) The borrower must submit to the Secretary an application for a total and permanent disability discharge on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).

(v) The borrower must submit the application described in paragraph (c)(2)(iv) of this section to the Secretary within 90 days of the date the physician certifies the application.

(vi) After the Secretary receives the application described in paragraph (c)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans, that the Secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower or the physician who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the borrower that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of total and permanent disability discharge application.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification supports the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certified the borrower's application.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician certified the borrower's loan discharge application and directs each lender to submit a disability claim to the guaranty agency so the loan can be assigned to the Secretary. The Secretary returns any payment received by the Secretary after the date the physician certified the borrower's loan discharge application to the person who made the payments.

(iv) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the lender that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(6)(i) of this section.

(v) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower and the lender that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the lender will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vi) If the borrower requests re-evaluation in accordance with paragraph (c)(3)(v)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (c)(3)(v)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not available at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Receipt of new title IV loans or TEACH Grants after the date of the physician's certification.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (c)(3)(iii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (c)(6)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (c)(6)(i) of this section, the borrower must—

(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(6)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment, on a form approved by the Secretary.

(8) *Lender and guaranty agency actions.* (i) If the Secretary approves the borrower's total and permanent disability discharge application—

(A) The lender must submit a disability claim to the guaranty agency, in accordance with paragraph (g)(1) of this section;

(B) If the claim satisfies the requirements of § 682.402(g)(1), the guaranty agency must pay the claim submitted by the lender;

(C) After receiving a claim payment from the guaranty agency, the lender must return to the sender any payments received by the lender after the date the physician certified the borrower's loan discharge application as well as any payments received after claim payment from or on behalf of the borrower;

(D) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender; and

(E) The guaranty agency must assign the loan to the Secretary within 45 days of the date the guaranty agency pays the disability claim and receives the reimbursement payment, or within 45 days of the date the guaranty agency receives the notice described in paragraph (c)(3)(iii) of this section if a guaranty agency is the lender.

(ii) If the Secretary does not approve the borrower's total and permanent disability discharge request, the lender must resume collection of the loan and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except if the lender is a guaranty agency it may not capitalize accrued interest.

(9) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b).* (i) *General.* If a veteran notifies the lender that the veteran claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender must direct the veteran to notify the Secretary of the veteran's intent to submit an application for a total and permanent disability discharge and provide the veteran with the information needed for the veteran to apply for a total and permanent disability discharge to the Secretary.

(ii) If the veteran notifies the Secretary of the veteran's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the veteran with the information needed for the veteran to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the veteran and notifies the lenders of the veteran's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the veteran for a period not to exceed 120 days; and

(D) Informs the veteran that the suspension of collection activity described in paragraph (c)(9)(ii)(C) of this section will end after 120 days and the lender will resume collection on the loans if the veteran does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the veteran fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the veteran's title IV loans and the lender is deemed to have exercised forbearance of principal and interest from the date it suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

(iv) The veteran must submit to the Secretary an application for a total and permanent disability discharge on a form approved by the Secretary.

(v) The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(vi) After the Secretary receives the application and supporting documentation described in paragraphs (c)(9)(iv) and (c)(9)(v) of this section, the Secretary notifies the holders of the veteran's title IV loans, that Secretary has received a total and permanent disability discharge application from the veteran. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received.

(vii) If the application is incomplete, the Secretary notifies the veteran of the missing information and requests the missing information from the veteran or the veteran's representative. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(9)(vi) of this section directs the lenders to suspend collection activity or maintain the suspension of collection activity on the veteran's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the veteran that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the veteran that the veteran's lenders will suspend collection activity on the veteran's title IV loans while the Secretary reviews the veteran's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(x) After making a determination that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the veteran and the veteran's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the effective date of the determination and directs each lender to submit a disability claim to the guaranty agency.

(xi) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the veteran and the lender that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status it was in at the time the veteran applied for a total and permanent disability discharge;

(C) An explanation that the lender will notify the veteran of the date the veteran must resume making payments on the loan;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with procedures described in paragraphs (c)(2) through (c)(8) of this section, if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(xii)(A) If the Secretary approves the veteran's total and permanent disability discharge application based on documentation from the Department of

Veterans Affairs the lender must submit a disability claim to the guaranty agency, in accordance with paragraph (g)(1) of this section.

(B) If the claim meets the requirements of paragraph (g)(1) of this section, the guaranty agency must pay the claim and discharge the loan.

(C) The Secretary reimburses the guaranty agency for a disability claim after the agency pays the claim to the lender.

(D) Upon receipt of the claim payment from the guaranty agency, the lender returns any payments received by the lender on or after the effective date of the determination by the Department of Veterans Affairs to the person who made the payments.

(E) If the Secretary does not approve the veteran's total and permanent disability discharge based on documentation from the Department of Veterans Affairs, the lender must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

* * * * *

(g) * * *

(2) * * *

(ii) Within 60 days of the date the lender received notification from the Secretary that the borrower is totally and permanently disabled, in accordance with § 682.402(c)(3)(iii) or 682.402(c)(9)(ix).

* * * * *

(h) * * *

(1) * * *

(v) In the case of a disability claim based on a veteran's discharge request processed in accordance with § 682.402(c)(9), the guaranty agency must review the claim promptly and not later than 45 days after the claim was filed by the lender pay the claim or return the claim to the lender in accordance with § 682.402(c)(9)(xi)(B).

* * * * *

(k) * * *

(2) * * *

(i) The Secretary determines that the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan or each of the co-makers of a PLUS loan) has died, or has filed for relief in bankruptcy, in accordance with the procedures in paragraph (b), (c), or (f) of this section, or the student was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school. For purposes of this paragraph, references to the ''lender'' and ''guaranty agency'' in paragraphs (b) through (f) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the Secretary determines that the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period, or the borrower (or the student for whom a parent received a PLUS loan) was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school;

* * * * *

(r) * * *

(2) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary based on the determination that the borrower is eligible for a total and permanent disability discharge, the guaranty agency must promptly return these payments to the sender. At the same time that the agency returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after it has been discharged due to a total and permanent disability, unless the loan is reinstated in accordance with § 682.402(c), or the Secretary directs the borrower otherwise.

(3) When the Secretary discharges the loan, the Secretary returns to the sender any payments received by the Secretary on the loan after the date the borrower became totally and permanently disabled.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

7. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

8. Section 685.200 is amended by revising paragraph (a)(1)(iv)(A)(*3*) to read as follows:

§ 685.200 Borrower eligibility.

(a) * * *

(1) * * *

(iv) * * *

(A) * * *

(*3*) If the borrower receives a new Direct Loan, other than a Direct Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 685.213(b)(4)(iii), 34 CFR 674.61(b)(3)(v), 34 CFR 682.402(c)(3)(iv), or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, the borrower resumes repayment on the previously discharged loan in accordance with § 685.213(b)(7), 34 CFR 674.61(b)(6), or 34 CFR 682.402(c)(6), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

* * * * *

9. Section 685.202 is amended by:

A. In paragraph (b)(3), removing the citation ''§ 685.209(d)(3)'' and adding, in its place, the citation ''§ 685.209(b)(3)(iv)''.

B. Revising paragraph (b)(4).

The revision reads as follows:

§ 685.202 Charges for which Direct Loan borrowers are responsible.

* * * * *

(b) * * *

(4) Except as provided in paragraph (b)(3) of this section and in §§ 685.208(l)(5) and 685.209(b)(3)(iv), the Secretary annually capitalizes unpaid interest when the borrower is paying under the alternative repayment plan or the income-contingent repayment plan described in § 685.209(b) and the borrower's scheduled payments do not cover the interest that has accrued on the loan.

* * * * *

10. Section 685.208 is amended by:

A. Revising paragraph (a)(1).

B. Revising paragraph (a)(2)

C. Revising paragraph (k).

The revisions read as follows:

§ 685.208 Repayment plans.

(a) * * *

(1) *Borrowers who entered repayment before July 1, 2006.* (i) A Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan may be repaid under —

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (d) of this section;

(C) The graduated repayment plan in accordance with paragraph (f) of this section;

(D) The income-contingent repayment plan in accordance with paragraph (k)(2) of this section; or

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(ii) A Direct PLUS Loan or a Direct PLUS Consolidation Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (d) of this section; or

(C) The graduated repayment plan in accordance with paragraph (f) of this section.

(2) *Borrowers entering repayment on or after July 1, 2006.* (i) A Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan that was made to a graduate or professional student borrower may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (g) of this section;

(D) The income-contingent repayment plans in accordance with paragraph (k) of this section; or

(E) The income-based repayment plan, in accordance with paragraph (m) of this section.

(ii) A Direct PLUS Loan that was made to a parent borrower may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section; or

(C) The graduated repayment plan in accordance with paragraph (g) of this section.

(iii) A Direct Consolidation Loan that did not repay a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (c) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (h) of this section;

(D) The income-contingent repayment plans in accordance with paragraph (k) of this section; or

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(iv) A Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (c) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (h) of this section; or

(D) The income-contingent plan in accordance with paragraph (k)(2) of this section.

(v) No scheduled payment may be less than the amount of interest accrued on the loan between monthly payments, except under the income-contingent repayment plan, the income-based repayment plan, or an alternative repayment plan.

* * * * *

(k) *Income-contingent repayment plans.* (1) Under the income-contingent repayment plan described in § 685.209(a), the required monthly payment for a borrower who has a partial financial hardship is limited to no more than 10 percent of the amount by which the borrower's Adjusted Gross Income (AGI) exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. The Secretary determines annually whether the borrower continues to qualify for this reduced monthly payment based on the amount of the borrower's eligible loans, AGI, and poverty guideline.

(2) Under the income-contingent repayment plan described in § 685.209(b), a borrower's monthly repayment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI reported by the borrower for the most recent year for which the Secretary has obtained income information.

(3) For the income-contingent repayment plan described in § 685.209(b), the regulations in effect at the time a borrower enters repayment and selects the income-contingent repayment plan or changes into the income-contingent repayment plan from another plan govern the method for determining the borrower's monthly repayment amount for all of the borrower's Direct Loans, unless—

(i) The Secretary amends the regulations relating to a borrower's monthly repayment amount under the income-contingent repayment plan; and

(ii) The borrower submits a written request that the amended regulations apply to the repayment of the borrower's Direct Loans.

(4) Provisions governing the income-contingent repayment plans are in § 685.209.

* * * * *

11. Section 685.209 is revised to read as follows:

§ 685.209 Income-contingent repayment plans.

(a) *ICR–A plan:* The ICR–A plan is an income-contingent repayment plan for eligible new borrowers.

(1) *Definitions.* As used in this section—

(i) *Adjusted gross income (AGI)* means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income;

(ii) *Eligible loan* means any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower;

(iii) *Eligible new borrower* means an individual who—

(A) Has no outstanding balance on a Direct Loan Program Loan or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date he or she receives a new loan after October 1, 2007; and

(B)(*1*) Receives a disbursement of a Direct Subsidized Loan, Direct Unsubsidized Loan, or student Direct PLUS Loan on or after October 1, 2011; or

(*2*) Receives a Direct Consolidation Loan based on an application received on or after October 1, 2011, except that a borrower is not considered an eligible new borrower if the Direct Consolidation Loan repays a loan that would otherwise make the borrower ineligible under paragraph (a)(1)(iii)(A) of this section;

(iv) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs;

(v) *Partial financial hardship* means a circumstance in which—

(A) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the ICR–A plan, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(B) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the ICR–A plan, exceeds 10 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size; and

(vi) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(2) *Terms of the ICR–A repayment plan.* (i) A borrower may select the ICR–A plan only if the borrower has a partial financial hardship. The borrower's aggregate monthly loan payments are limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12.

(ii) The Secretary adjusts the calculated monthly payment if—

(A) Except for borrowers provided for in paragraph (a)(2)(ii)(B) of this section, the total amount of the borrower's eligible loans are not Direct Loans, in which case the Secretary determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(B) Both the borrower and borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the Secretary determines—

(*1*) Each borrower's percentage of the couple's total eligible loan debt;

(*2*) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (a)(2)(ii)(B)(*1*) of this section; and

(*3*) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly Direct Loan payment by multiplying the payment determined in paragraph (a)(2)(ii)(B)(*2*) of this section by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(C) The calculated amount under paragraph (a)(2)(i), (a)(2)(ii)(A), or (a)(2)(ii)(B) of this section is less than $5.00, in which case the borrower's monthly payment is $0.00; or

(D) The calculated amount under paragraph (a)(2)(i), (a)(2)(ii)(A), or (a)(2)(ii)(B) of this section is equal to or greater than $5.00 but less than $10.00, in which case the borrower's monthly payment is $10.00.

(iii) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's Direct Subsidized loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the ICR–A plan. On a Direct Consolidation Loan that repays loans on which the Secretary has not charged the borrower accrued interest, the three-year period includes the period for which the Secretary did not charge the borrower accrued interest on the underlying loans. This three-year period does not include any period during which the borrower receives an economic hardship deferment.

(iv)(A) Except as provided in paragraph (a)(2)(iii) of this section, accrued interest is capitalized—

(*1*) When a borrower is determined to no longer have a partial financial hardship; or

(*2*) At the time a borrower chooses to leave the ICR–A plan.

(B)(*1*) The amount of accrued interest capitalized under paragraph (a)(2)(iv)(A)(*1*) of this section is limited to 10 percent of the original principal balance at the time the borrower entered repayment under the ICR–A plan.

(*2*) After the amount of accrued interest reaches the limit described in paragraph (a)(2)(iv)(B)(*1*) of this section, interest continues to accrue, but is not capitalized while the borrower remains on the ICR–A plan.

(v) If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower chooses to leave the ICR–A plan or no longer has a partial financial hardship.

(vi) The repayment period for a borrower under the ICR–A plan may be greater than 10 years.

(3) *Payment application and prepayment.* (i) The Secretary applies any payment made under the ICR–A plan in the following order:

(A) Accrued interest.

(B) Collection costs.

(C) Late charges.

(D) Loan principal.

(ii) The borrower may prepay all or part of a loan at any time without penalty, as provided under § 685.211(a)(2).

(iii) If the prepayment amount equals or exceeds a monthly payment amount of $10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of § 685.211(a)(3).

(iv) If the prepayment amount exceeds a monthly payment amount of $0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph (a)(3)(i) of this section.

(4) *Changes in the payment amount.* (i) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the ICR–A plan, but the Secretary recalculates the borrower's monthly payment. The Secretary also

recalculates the monthly payment for a borrower who chooses to stop making income contingent payments. In either case, as a result of the recalculation—

(A) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans under the ICR–A plan; and

(B) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(ii) A borrower who no longer wishes to repay under the ICR–A plan may change to a different repayment plan in accordance with § 685.210(b).

(5) *Eligibility documentation, verification, and notifications.* (i)(A) The Secretary determines whether a borrower has a partial financial hardship to qualify for the ICR–A plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary requires the borrower to provide documentation, acceptable to the Secretary, of the borrower's AGI.

(B) If the borrower's AGI is not available, or if the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the borrower must provide other documentation to verify income.

(C) The borrower must annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(ii) After making a determination that a borrower has a partial financial hardship to qualify for the ICR–A plan for the year the borrower initially elects the plan and for each subsequent year that the borrower has a partial financial hardship, the Secretary sends the borrower a written notification that provides the borrower with —

(A) The borrower's scheduled monthly payment amount, as calculated under paragraph (a)(2) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (a)(5)(i) of this section, if the borrower chooses to remain on the ICR–A plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(C) An explanation of the consequences, as described in paragraphs (a)(5)(i)(C) and (a)(5)(v) of this section, if the borrower does not provide the required information; and

(D) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (a)(5)(ii)(A) through (D) of this section.

(iii) For each subsequent year that a borrower who currently has a partial financial hardship remains on the ICR–A plan, the Secretary notifies the borrower in writing of the requirements in paragraph (a)(5)(i) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (a)(5)(iii)(A) of this section. The notification provides the borrower with —

(A) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation described in paragraph (a)(5)(i) of this section (annual deadline); and

(B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (a)(4)(i) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized in accordance with paragraph (a)(2)(iv) of this section.

(iv) Each time the Secretary makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(A) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (a)(4)(i) of this section;

(B) An explanation that unpaid interest will be capitalized in accordance with paragraph (a)(2)(iv) of this section; and

(C) Information about the borrower's option to request, at any time, that the Secretary redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the Secretary determines that the borrower again has a partial financial hardship, the Secretary recalculates the borrower's monthly payment in accordance with paragraph (a)(2)(i) of this section and sends the borrower a written notification that includes the information described in paragraphs (a)(5)(ii)(A) through (D) of this section.

(v) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the ICR–A plan, the Secretary sends the borrower a written notification that includes the information described in paragraph (a)(5)(iv)(C) of this section.

(vi) If a borrower who is currently repaying under another repayment plan selects the ICR–A plan but does not provide the documentation described in paragraphs (a)(5)(i)(A) or (B) of this section, or if the Secretary determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(vii) The Secretary designates the repayment option described in paragraph (a)(4)(i) of this section if a borrower who is currently repaying under the ICR–A repayment plan remains on the plan for a subsequent year but the Secretary does not receive the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section within 10 days of the specified annual deadline.

(viii) If the Secretary receives the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section within 10 days of the specified annual deadline, the Secretary maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined. If the new monthly payment amount is less than the borrower's previously calculated ICR–A monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of § 685.211(b)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of § 685.209(a)(3)(i).

(ix)(A) If the Secretary receives the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (a)(4)(i) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated ICR–A monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(B) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(6) *Loan forgiveness.* (i) To qualify for loan forgiveness after 20 years, a borrower must have participated in the ICR–A plan and satisfied at least one of the following conditions during that period:

(A) Made reduced monthly payments under a partial financial hardship as provided in paragraph (a)(2)(i) or (a)(2)(ii) of this section, including a monthly payment amount of $0.00, as provided under paragraph (a)(2)(ii)(C) of this section.

(B) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-contingent payments as provided in paragraph (a)(4)(i) of this section.

(C) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b) for the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment.

(D) Made monthly payments under the Direct Loan standard repayment plan described in § 685.208(b).

(E) Made monthly payments under the ICR–B plan described in paragraph (b) of this section or the income-based repayment plan described in § 685.221, including a calculated monthly payment amount of $0.00.

(F) Received an economic hardship deferment on eligible Direct Loans.

(ii) As provided under paragraph (a)(6)(v) of this section, the Secretary cancels any outstanding balance of principal and accrued interest on Direct loans for which the borrower qualifies for forgiveness if the Secretary determines that—

(A) The borrower made monthly payments under one or more of the repayment plans described in paragraph (a)(6)(i) of this section, including a monthly payment amount of $0.00, as provided under paragraph (a)(2)(ii)(C) of this section; and

(B)(*1*) The borrower made those monthly payments each year for a 20-year period; or

(*2*) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 20 years of payments.

(iii) For a borrower who qualifies for the ICR–A plan, the beginning date for the 20-year period is—

(A) If the borrower made payments under the ICR–B plan described in paragraph (b) of this section or the income-based repayment plan described in § 685.221, the earliest date the borrower made a payment on the loan under one of those plans at any time after October 1, 2007; or

(B) If the borrower did not make payments under the ICR–B plan described in paragraph (b) of this section or the income-based repayment plan described in § 685.221—

(*1*) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for the ICR–A plan. The beginning date is the date the borrower made the payment or received the deferment after October 1, 2007;

(*2*) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan after October 1, 2007;

(*3*) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (a)(6)(iii)(B)(*1*) or (a)(6)(iii)(B)(*2*) of this section, the date the borrower made a payment on the loan under the ICR–A plan;

(*4*) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan that met the requirements of paragraph (a)(6)(i) of this section; or

(*5*) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (a)(6)(iii)(A) or (a)(6)(iii)(B) of this section, the date the borrower made a payment on the loan under the ICR–A plan.

(iv) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the 20-year forgiveness period.

(v)(A) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (a)(6) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than 6 months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes—

(*1*) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(*2*) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(*3*) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(B) The Secretary determines when a borrower has met the loan forgiveness requirements in paragraph (a)(6) of this section and does not require the borrower to submit a request for loan forgiveness.

(C) After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

(*1*) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(*2*) Provides the borrower with the information described in paragraph (a)(6)(v)(A)(*3*) of this section; and

(*3*) Returns to the sender any payment received on a loan after loan forgiveness has been granted.

(b) *ICR–B plan:* The ICR–B plan is an income-contingent repayment plan under which a borrower's monthly payment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI.

(1) *Repayment amount calculation.* (i) The amount the borrower would repay is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment, and this basis for calculation does not change unless the

borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (b)(2)(ii) of this section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers' Direct Loan debts at the time they enter joint repayment.

(ii) The annual amount payable by a borrower under the ICR–B plan is the lesser of—

(A) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower's AGI as shown in the income percentage factor table in a notice published annually by the Secretary in the **Federal Register;** or

(B) 20 percent of discretionary income.

(iii)(A) For purposes of paragraph (b) of this section, discretionary income is defined as a borrower's AGI minus the amount of the poverty guideline as defined in paragraph (b)(1)(iii)(B) of this section. If a borrower provides documentation acceptable to the Secretary that the borrower has more than one person in the borrower's family, the Secretary applies the HHS Poverty Guidelines for the borrower's family size.

(B) For purposes of paragraph (b) of this section, the term ''poverty guideline'' refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty line to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(iv) For exact incomes not shown in the income percentage factor table in the annual notice published by the Secretary, an income percentage factor is calculated, based upon the intervals between the incomes and income percentage factors shown on the table.

(v) Each year, the Secretary recalculates the borrower's annual payment amount based on changes in the borrower's AGI, the variable interest rate, the income percentage factors in the table in the annual notice published by the Secretary, and updated HHS Poverty Guidelines (if applicable).

(vi) If a borrower's monthly payment is calculated to be greater than $0 but less than or equal to $5.00, the amount payable by the borrower is $5.00.

(vii) For purposes of the annual recalculation described in paragraph (b)(1)(v) of this section, after periods in which a borrower makes payments that are less than interest accrued on the loan, the payment amount is recalculated based upon unpaid accrued interest and the highest outstanding principal loan amount (including amount capitalized) calculated for that borrower while paying under the ICR–B plan.

(viii) For each calendar year, the Secretary publishes in the **Federal Register** a revised income percentage factor table reflecting changes based on inflation. This revised table is developed by changing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage changes in the Consumer Price Index (as determined by the Secretary) between December 1995 and the December next preceding the beginning of such calendar year.

(ix) Examples of the calculation of monthly repayment amounts and tables that show monthly repayment amounts for borrowers at various income and debt levels are included in the annual notice published by the Secretary.

(x) At the beginning of the repayment period under the ICR–B plan, the borrower must make monthly payments of the amount of interest that accrues on the borrower's Direct Loan until the Secretary calculates the borrower's monthly payment amount on the basis of the borrower's income.

(2) *Treatment of married borrowers.* (i)(A) For a married borrower who files a joint Federal tax return with his or her spouse, the AGI for both spouses is used to calculate the monthly payment amount under the ICR–B plan.

(B) For a married borrower who files a Federal income tax return separately from his or her spouse, only the borrower's AGI is used to determine the monthly payment amount under the ICR–B plan.

(ii) Married borrowers may repay their loans jointly. The outstanding balances on the loans of each borrower are added together to determine the borrowers' payback rate under paragraph (b)(1) of this section.

(iii) The amount of the payment applied to each borrower's debt is the proportion of the payments that equals the same proportion as that borrower's debt to the total outstanding balance, except that the payment is credited toward outstanding interest on any loan before any payment is credited toward principal.

(3) *Other features of the ICR–B plan.* (i) *Alternative documentation of income.* If a borrower's AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation of income provided by the borrower to calculate the borrower's monthly repayment amount.

(ii) *Adjustments to repayment obligations.* The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

(iii) *Repayment period.* (A) The maximum repayment period under the ICR–B plan is 25 years.

(B) The repayment period includes—

(*1*) Periods in which the borrower makes payments under the ICR–B plan on loans that are not in default;

(*2*) Periods in which the borrower makes reduced monthly payments under the income-based repayment plan or a recalculated reduced monthly payment after the borrower no longer has a partial financial hardship or stops making income-based payments, as provided in § 685.221(d)(1)(i);

(*3*) Periods in which the borrower made monthly payments under the standard repayment plan after leaving the income-based repayment plan as provided in § 685.221(d)(2);

(*4*) Periods in which the borrower makes payments under the standard repayment plan described in § 685.208(b);

(*5*) For borrowers who entered repayment before October 1, 2007, and if the repayment period is not more than 12 years, periods in which the borrower makes monthly payments under the extended repayment plans described in § 685.208(d) and (e), or the standard repayment plan described in § 685.208(c);

(*6*) Periods after October 1, 2007, in which the borrower makes monthly payments under any other repayment plan that are not less than the amount required under the standard repayment plan described in § 685.208(b); or

(*7*) Periods of economic hardship deferment after October 1, 2007.

(C) If a borrower repays more than one loan under the ICR–B plan, a separate repayment period for each loan begins when that loan enters repayment.

(D) If a borrower has not repaid a loan in full at the end of the 25-year repayment period under the ICR–B plan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than 6 months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notification that includes—

(*1*) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(*2*) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(*3*) General information on the current treatment of the forgiveness amount, and instructions for the borrower to contact the Internal Revenue Service for more information.

(E) The Secretary determines when a borrower has met the loan forgiveness requirements under paragraph (b)(3)(iii)(D) of this section and does not require the borrower to submit a request for loan forgiveness. After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

(*1*) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(*2*) Provides the information described in paragraph (b)(3)(iii)(D)(*3*) of this section; and

(*3*) Returns to the sender any payment received on a loan after loan forgiveness has been granted.

(iv) *Limitation on capitalization of interest.* If the amount of a borrower's monthly payment is less than the accrued interest, the unpaid interest is capitalized until the outstanding principal amount is 10 percent greater than the original principal amount. After the outstanding principal amount is 10 percent greater than the original amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original amount is the amount owed by the borrower when the borrower enters repayment.

(v) *Notification of terms and conditions.* When a borrower elects or is required by the Secretary to repay a loan under the ICR–B plan, and for each subsequent year that the borrower remains on the plan, the Secretary sends the borrower a written notification that provides the terms and conditions of the plan, including—

(A) The borrower's scheduled monthly payment amount as calculated under paragraph (b)(1) or (b)(3)(vi)(D) of this section, as applicable, and the time period during which this scheduled monthly payment will apply (''annual payment period'');

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (b)(3)(vi)(A) of this section, if the borrower chooses to remain on the ICR–B plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive the information;

(C) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment obligations, as described in paragraph (b)(3)(iii) of this section, the borrower may contact the Secretary and obtain the Secretary's determination as to whether an adjustment is appropriate; and

(D) An explanation of the consequences, as described in paragraph (b)(3)(vi)(D) of this section, if the borrower does not provide the required information.

(vi) *Documentation of income.* (A) For the initial year that a borrower selects the ICR–B plan and for each subsequent year that the borrower remains on the plan, the borrower must provide acceptable documentation, as determined by the Secretary, of the borrower's AGI to the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan under the plan.

(B) For each subsequent year that a borrower remains on the ICR–B plan, the Secretary notifies the borrower in writing of the requirement described in paragraph (b)(3)(vi)(A) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (b)(3)(vi)(B)(*1*) of this section. The notification provides the borrower with—

(*1*) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive the documentation described in paragraph (b)(3)(vi)(A) of this section (annual deadline); and

(*2*) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (b)(3)(vi)(D) of this section, and the effective date for the recalculated monthly payment amount.

(C) The Secretary designates the standard repayment plan for a borrower who initially selects the ICR–B plan but does not comply with the requirement in paragraph (b)(3)(vi)(A) of this section.

(D) If, during a subsequent year that a borrower remains on the ICR–B plan, the Secretary does not receive the documentation described in paragraph (b)(3)(vi)(A) of this section within 10 days of the specified annual deadline, the Secretary recalculates the borrower's required monthly payment amount. The maximum recalculated monthly amount the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's loans that was outstanding at the time the borrower began repayment under the ICR–B plan. The repayment period based on the recalculated payment may exceed 10 years.

(E) If the Secretary receives the documentation described in paragraph (b)(3)(vi)(A) of this section within 10 days of the specified annual deadline, the Secretary maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined. If the new calculated monthly payment amount is less than the borrower's previously calculated monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. The Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of § 685.211(a)(1), unless the borrower requests otherwise.

(F)(*1*) If the Secretary receives the documentation described in paragraph (b)(3)(vi)(A) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (b)(3)(vi)(D) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(*2*) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(G) If a borrower defaults and the Secretary designates the ICR–B plan for the borrower but the borrower fails to comply with the requirement in paragraph (b)(3)(vi)(A) of this section, the Secretary mails a notice to the borrower establishing a repayment schedule for the borrower.

(Approved by the Office of Management and Budget under control number 1845–0021)

Authority: 20 U.S.C. 1087a (*et seq.*)

12. Section 685.210 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 685.210 Choice of repayment plan.

* * * * *

(b) * * *

(2) * * *

(ii) If a borrower changes plans, the repayment period is the period provided under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income-contingent repayment plan under § 685.209(a), the income-contingent repayment plan under § 685.209(b), or the income-based repayment plan under § 685.221, the repayment period is calculated as described in § 685.209(a)(6)(iii), § 685.209(b)(3)(iii), or § 685.221(f)(3), respectively.

* * * * *

§ 685.211 [Amended]

13. Section 685.211(a)(1) is amended by adding the words ''income-contingent repayment plan under § 685.209(a)(3) or the'' immediately before the words ''income-based repayment''.

§ 685.212 [Amended]

14. Section 685.212(g)(2) is amended by removing the words ''the borrower became totally and permanently disabled, as certified under § 685.213(b)'' and adding, in their place, the words ''specified in § 685.213(b)(4)(iii) or 685.213(c)(2)(i), as applicable''.

15. Section 685.213 is revised to read as follows:

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 685.102(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b), the borrower's loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(4) For purposes of § 685.213, a borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a ''borrower'' or a ''veteran'' include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary.

(b) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b).* (1) *Borrower application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. If the borrower notifies the Secretary that the borrower claims to be totally and permanently disabled prior to submitting a total and permanent disability discharge application, the Secretary suspends collection activity on any of the borrower's title IV loans held by the Secretary, and notifies the borrower's other title IV loan holders to suspend collection activity on the borrower's title IV loans for a period not to exceed 120 days.

(2) *Physician Certification.* The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b).

(3) *Deadline for Application Submission.* The borrower must submit the application described in paragraph (b)(1) of this section to the Secretary within 90 days of the date the physician certifies the application. Upon receipt of the borrower's application, the Secretary—

(i) Identifies all title IV loans owed by the borrower, notifies the lenders that the Secretary has received a total and permanent disability discharge application from the borrower and directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans;

(ii) If the application is incomplete, notifies the borrower of the missing information and requests the missing information from the borrower or the physician who certified the application, as appropriate, and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge; and

(iv) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(4) *Determination of eligibility.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in § 685.102(b), the borrower is considered totally and permanently disabled as of the date the physician certified the borrower's application.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 685.102(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician certified the borrower's loan discharge application. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(7)(i) of this section.

(iv) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 685.102(b), the Secretary notifies the borrower that the application for a disability discharge has been denied. The notification to the borrower includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status that would have existed if the total and permanent disability discharge application had not been received;

(C) The date that the borrower must resume making payments;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the borrower's application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(v) If the borrower requests re-evaluation in accordance with paragraph (b)(4)(iv)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(4)(iv)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not available at the time the Secretary reviewed the borrower's initial application for total and permanent disability discharge.

(5) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(6) *Receipt of new title IV loans or TEACH Grants after the date of the physician's certification.* If a borrower receives a disbursement of a new title IV loan or receives a new Teach Grant made on or after the date the physician certified the borrower's discharge application and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and resumes collection on the borrower's loan.

(7) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(4)(iii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(7)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(8) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(7)(i) of this section, the borrower must—

(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(7)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form provided by the Secretary.

(c) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b).* (1) *Veteran's application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability as described in paragraph (2) of the definition of that term in § 685.102(b), a veteran must submit a discharge application to the Secretary on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The Secretary does not require the veteran to provide any additional documentation related to the veteran's disability. Upon receipt of the veteran's application, the Secretary—

(i) Identifies all title IV loans owed by the veteran and notifies the lenders that Secretary has received a total and permanent disability discharge application from the borrower;

(ii) If the application is incomplete, requests the missing information from the veteran and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge; and

(iv) Explains the Secretary's process for reviewing total and permanent disability discharge applications.

(2) *Determination of eligibility.* (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of

the definition of that term in § 685.102(b), the Secretary discharges the veteran's obligation to make any further payments on the loan and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b), the Secretary notifies the veteran that the application for a disability discharge has been denied. The notification to the veteran includes—

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status it was in at the time the veteran applied for a total and permanent disability discharge;

(C) The date that the veteran must resume making payments;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraph (b) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 685.102(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(Approved by the Office of Management and Budget under control number 1845–0065.)

(Authority: 20 U.S.C. 1087a *et seq.*)

16. Section 685.220 is amended by revising paragraph (d)(1)(ii)(D) to read as follows:

§ 685.220 Consolidation.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) In default but agrees to repay the consolidation loan under one of the income-contingent repayment plans described in § 685.208(k) or the income-based repayment plan described in § 685.208(m).

* * * * *

17. Section 685.221 is amended by:

A. Redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), respectively.

B. Adding a new paragraph (a)(4).

C. In redesignated paragraph (a)(5)(i), removing the words "exceeds 15 percent" and adding, in their place, the words "exceeds 15 percent or, for a new borrower, 10 percent".

D. In redesignated paragraph (a)(5)(ii), removing the words "exceeds 15 percent" and adding, in their place, the words "exceeds 15 percent or, for a new borrower, 10 percent".

E. In paragraph (b)(1), removing the words "no more than 15 percent" and adding, in their place, the words "no more than 15 percent or, for a new borrower, 10 percent".

F. In paragraph (b)(2)(i), removing the words "the total amount of eligible loans" and adding, in their place, the words "the total outstanding principal amount of the borrower's eligible loans".

G. In paragraph (b)(2)(ii)(C), removing the words "the outstanding principal amount of eligible loans" and adding, in their place, the words "the total outstanding principal amount of the borrower's eligible loans".

H. Revising paragraph (c).

I. Revising paragraph (d).

J. Revising paragraph (e).

K. Revising paragraph (f).

The addition and revisions read as follows:

§ 685.221 Income-based repayment plan.

(a) * * *

(4) *New borrower* means an individual who has no outstanding balance on a Direct Loan Program or FFEL Program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014.

* * * * *

(c) *Payment application and prepayment.* (1) The Secretary applies any payment made under the income-based repayment plan in the following order:

(i) Accrued interest.

(ii) Collection costs.

(iii) Late charges.

(iv) Loan principal.

(2) The borrower may prepay all or part of a loan at any time without penalty, as provided under § 685.211(a)(2).

(3) If the prepayment amount equals or exceeds a monthly payment amount of $10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of § 685.211(a)(3).

(4) If the prepayment amount exceeds a monthly payment amount of $0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph (c)(1) of this section.

(d) *Changes in the payment amount.* (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan, but the Secretary recalculates the borrower's monthly payment. The Secretary also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as result of the recalculation—

(i) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(2)(i) If a borrower no longer wishes to pay under the income-based payment plan, the borrower must pay under the standard repayment plan and the Secretary recalculates the borrower's monthly payment based on—

(A) For a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan, the time remaining under the maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(B) For a Direct Consolidation Loan, the time remaining under the applicable repayment period as initially determined under § 685.208(j) and the amount of that loan that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(ii) A borrower who no longer wishes to repay under the income-based repayment plan and who is required to repay under the Direct Loan standard repayment plan in accordance with paragraph (d)(2)(i) of this section may request a change to a different repayment plan after making one monthly payment under the Direct Loan standard repayment plan. For this purpose, a monthly payment may include one payment made under a forbearance that provides for accepting smaller payments than previously scheduled, in accordance with § 685.205(a).

(e) *Eligibility documentation, verification, and notifications.* (1) The Secretary determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary requires the borrower to—

(i) Provide documentation, acceptable to the Secretary, of the borrower's AGI;

(ii) If the borrower's AGI is not available, or the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, provide other documentation to verify income; and

(iii) Annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(2) After making a determination that a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower initially elects the plan and for any subsequent year that the borrower has a partial financial hardship, the Secretary sends the borrower a written notification that provides the borrower with—

(i) The borrower's scheduled monthly payment amount, as calculated under paragraph (b)(1) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(ii) Information about the requirement for the borrower to annually provide the information described in paragraph (e)(1) of this section, if the borrower chooses to remain on the income-based repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(iii) An explanation of the consequences, as described in paragraphs (e)(1)(iii) and (e)(5) of this section, if the borrower does not provide the required information;

(iv) An explanation of the consequences if the borrower no longer wishes to repay under the income-based repayment plan; and

(v) Information about the borrower's option to request, at any time during the borrower's current annual repayment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (v) of this section.

(3) For each subsequent year that a borrower who currently has a partial financial hardship remains on the income-based repayment plan, the Secretary notifies the borrower in writing of the requirements in paragraph (e)(1) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (e)(3)(i) of this section. The notification provides the borrower with—

(i) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the information described in paragraph (e)(1) of this section (''annual deadline''); and

(ii) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (d)(1) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (b)(4) of this section.

(4) Each time the Secretary makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(i) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (d)(1) of this section;

(ii) An explanation that unpaid interest will be capitalized in accordance with paragraph (b)(4) of this section; and

(iii) Information about the borrower's option to request, at any time, that the Secretary redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the Secretary determines that the borrower again has a partial financial hardship, the Secretary recalculates the borrower's monthly payment in accordance with paragraph (b)(1) of this section and sends the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(5) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the income-based repayment plan, the Secretary sends the borrower a written notification that includes the information described in paragraph (e)(4)(iii) of this section.

(6) If a borrower who is currently repaying under another repayment plan selects the income-based repayment plan but does not provide the information described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, or if the Secretary determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(7) The Secretary designates the repayment option described in paragraph (d)(1) of this section if a borrower who is currently repaying under the income-based repayment plan remains on the plan for a subsequent year but the Secretary does not receive the information described in paragraphs (e)(1)(i) through (e)(1)(ii) of this section within 10 days of the specified annual deadline.

(8) If the Secretary receives the information described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section within 10 days of the specified annual deadline, the Secretary maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined. If the new monthly payment amount is less than the borrower's previously calculated income-based monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of § 685.211(b)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of

the most recent annual payment period in accordance with the requirements of § 685.221(c)(1).

(9)(i) If the Secretary receives the documentation described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (d)(1) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(ii) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments were made within 15 days of the scheduled due date for the full previously calculated payment amount.

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years or, for a new borrower, after 20 years, a borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during the applicable loan forgiveness period:

(i) Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) or (b)(2) of this section, including a monthly payment amount of $0.00, as provided under paragraph (b)(2)(ii) of this section.

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d) of this section.

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b) for the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment.

(iv) Made monthly payments under the Direct Loan standard repayment plan described in § 685.208(b).

(v) Made monthly payments under a Direct Loan income-contingent repayment plan, including a calculated monthly payment amount of $0.00.

(vi) Received an economic hardship deferment on eligible Direct Loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary cancels any outstanding balance of principal and accrued interest on Direct loans for which the borrower qualifies for forgiveness if the Secretary determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly payment amount of $0.00, as provided under paragraph (b)(2)(iii) of this section; and

(ii)(A) The borrower made those monthly payments each year for the applicable loan forgiveness period, or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments or, for a new borrower, the equivalent of 20 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the applicable loan forgiveness period is—

(i) If the borrower made payments under the income contingent repayment plan, the date the borrower made a payment on the loan under that plan at any time after July 1, 1994; or

(ii) If the borrower did not make payments under the income contingent repayment plan—

(A) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(B) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(C) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(ii)(A) or (f)(3)(ii)(B) of this section, the date the borrower made a payment under the income-based repayment plan on the loan;

(D) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan that met the requirements in paragraph (f)(1) of this section; or

(E) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (f)(3)(ii) of this section, determining the date the borrower made a payment under the income-based repayment plan on the loan.

(4) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the applicable loan forgiveness period.

(5)(i) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (f) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than 6 months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes—

(A) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(B) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(C) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(ii) The Secretary determines when a borrower has met the loan forgiveness requirements under paragraph (f) of this section and does not require the borrower to submit a request for loan forgiveness.

(iii) After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

(A) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(B) Provides the borrower with the information described in paragraph (f)(5)(i)(C) of this section; and

(C) Returns to the sender any payment received on a loan after loan forgiveness has been granted in accordance with paragraph (f)(5)(i) of this section.

* * * * *

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Department of Commerce

United States Patent and Trademark Office

37 CFR Parts 1 and 41

Changes To Implement the Preissuance Submissions by Third Parties Provision of the Leahy-Smith America Invents Act; Final Rule

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1 and 41

[Docket No.: PTO–P–2011–0073]

RIN 0651–AC67

Changes To Implement the Preissuance Submissions by Third Parties Provision of the Leahy-Smith America Invents Act

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is revising the rules of patent practice to implement the preissuance submissions by third parties provision of the Leahy-Smith America Invents Act (AIA). This provision provides a mechanism for third parties to contribute to the quality of issued patents by submitting to the Office, for consideration and inclusion in the record of a patent application, any patents, published patent applications, or other printed publications of potential relevance to the examination of the application. A preissuance submission may be made in any non-provisional utility, design, and plant application, as well as in any continuing application. A third-party preissuance submission must include a concise description of the asserted relevance of each document submitted, and must be submitted within a certain statutorily specified time period. The third party must submit a fee as prescribed by the Director, and a statement that the submission complies with the statutory provision. The Office has also revised the rules of patent practice to make related aspects of the existing protest rule more consistent with the new rule implementing the preissuance submissions by third parties provision. Further, the Office is eliminating the provision providing for public use proceedings.

DATES: *Effective Date:* The changes in this final rule take effect on September 16, 2012.

Applicability Date: The changes in this final rule apply to any application filed before, on, or after September 16, 2012.

FOR FURTHER INFORMATION CONTACT: Nicole Dretar Haines, Legal Advisor ((571) 272–7717), Brian E. Hanlon, Director ((571) 272–5047), or Hiram H. Bernstein, Senior Legal Advisor ((571) 272–7707), Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: Section 8 of the AIA amends the patent laws to provide a mechanism for third parties to submit to the Office, for consideration and inclusion in the record of a patent application, any patents, published patent applications, or other printed publications of potential relevance to the examination of the application. The changes in section 8 of the AIA take effect on September 16, 2012. This final rule revises the rules of practice to implement the provision of section 8 of the AIA.

Summary of Major Provisions: This final rule specifies the requirements for third parties to file a preissuance submission of patents, published patent applications, or other printed publications of potential relevance to the examination of an application. A preissuance submission must be timely filed, in writing, and contain: (1) A list identifying the items being submitted; (2) a concise description of the relevance of each item listed; (3) a legible copy of each non-U.S. patent document listed; (4) an English language translation of any non-English language item listed; (5) a statement by the party making the submission that the submission complies with the statute and the rule; and (6) the required fee.

The Office is revising the rules of practice to harmonize, where appropriate, the practice regarding protests with the practice regarding preissuance submissions. The Office is also revising the rules of practice to eliminate the former practice for making third-party submissions in published patent applications and to eliminate the practice regarding public use proceedings.

Costs and Benefits: This rulemaking is not economically significant as that term is defined in Executive Order 12866 (Sept. 30, 1993).

Background: The AIA was enacted into law on September 16, 2011. *See* Public Law 112–29, 125 Stat. 284 (2011). This final rule changes the rules of practice to implement section 8 of the AIA, which provides a mechanism for third parties to submit to the Office, for consideration and inclusion in the record of a patent application, any patents, published patent applications, or other printed publications of potential relevance to the examination of the application.

Section 8 of the AIA amends 35 U.S.C. 122 by adding 35 U.S.C. 122(e), which enumerates certain conditions that apply to a third-party preissuance submission to the Office in a patent application. Pursuant to 35 U.S.C. 122(e), preissuance submissions of patents, published patent applications, or other printed publications must be made in patent applications before the earlier of: (a) The date a notice of allowance under 35 U.S.C. 151 is given or mailed in the application; or (b) the later of (i) six months after the date on which the application is first published under 35 U.S.C. 122 by the Office, or (ii) the date of the first rejection under 35 U.S.C. 132 of any claim by the examiner during the examination of the application. 35 U.S.C. 122(e) also requires a concise description of the asserted relevance of each document submitted, a fee as prescribed by the Director, and a statement by the person making the third-party preissuance submission that the submission was made in compliance with 35 U.S.C. 122(e).

The preissuance submissions by third parties provision of the AIA takes effect on September 16, 2012. This provision applies to any patent application filed before, on, or after September 16, 2012.

This final rule implements 35 U.S.C. 122(e) in a new rule, 37 CFR 1.290, and revises the rules of practice in title 37 of the Code of Federal Regulations (CFR) concerning other related third-party practices. This final rule eliminates 37 CFR 1.99, which provided for third-party submissions of patents, published patent applications, or printed publications in published patent applications, but did not permit an accompanying concise description of the relevance of each submitted document and limited the time period for such submissions to up to two months after the date of the patent application publication or the mailing of a notice of allowance, whichever is earlier. By contrast, new 35 U.S.C. 122(e) and 37 CFR 1.290 permit third parties to submit the same types of documents, but with an accompanying concise description of relevance of each document submitted, and provide third parties with the same or more time to file preissuance submissions with the Office when compared with former 37 CFR 1.99. Third-party submissions under 37 CFR 1.290 provide an enhanced opportunity for third parties to identify and describe potentially relevant publications to the Office.

This final rule also eliminates the public use proceeding provisions of 37 CFR 1.292. Because section 6 of the AIA makes available a post-grant review proceeding in which prior public use may be raised, the pre-grant public use proceeding previously set forth in 37 CFR 1.292 is no longer necessary.

Additionally, information on prior public use may continue to be submitted by third parties via a protest in a pending application when the requirements of 37 CFR 1.291 have been met, and utilization of 37 CFR 1.291 will promote Office efficiency with respect to treatment of these issues. Such requests for a public use proceeding under 37 CFR 1.292 were very rare, and the few public use proceedings conducted each year were a source of considerable delay in the involved applications and seldom led to the rejection of claims on the basis of public use.

In view of the elimination of 37 CFR 1.99 and 37 CFR 1.292, this final rule amends 37 CFR 1.17 to eliminate the document submission fees pertaining to 37 CFR 1.292 and to add the document submission fee pertaining to new 37 CFR 1.290. This final rule also amends 37 CFR 41.202 to remove a reference to 37 CFR 1.99.

Additionally, this final rule amends 37 CFR 1.8 to add, among other items, third-party submissions filed under 37 CFR 1.290 to the list of items to which no benefit of a certificate of mailing or transmission will be given, and amends 37 CFR 1.6 to provide that facsimile transmissions are not permitted for third-party submissions, to which no benefit of a certificate of mailing or transmission will be given pursuant to 37 CFR 1.8.

In the notice of proposed rulemaking, the Office proposed to permit third-party submissions directed to reissue applications. *See Changes to Implement the Preissuance Submissions by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 448, 449 and 451 (Jan. 5, 2012). After reviewing the public comments received and revisiting this proposal, the Office has decided not to adopt its previously proposed position. Instead, the Office will continue to maintain its position that a reissue application is a post-issuance proceeding, as set forth in the *Manual of Patent Examining Procedure* (MPEP) § 1441.01 (8th ed. 2001) (Rev. 8, July 2010) (''a reissue application is a post-issuance proceeding''). Accordingly, a preissuance submission under 35 U.S.C. 122(e) is not permitted to be filed in a reissue application since 35 U.S.C. 122(e) is limited to *preissuance* submissions by third parties in patent applications. Third parties who have a need to submit information in a reissue application are advised to avail themselves of the protest provisions of 37 CFR 1.291. *See* MPEP § 1441.01 (providing that ''the prohibition against the filing of a protest after publication of an application under 35 U.S.C. 122(c) is not applicable to a reissue application'').

Third-party submissions also are not permitted in reexamination proceedings because reexamination proceedings are post-issuance proceedings. *See* 35 U.S.C. 302 and 35 U.S.C. 311.

In the notice of proposed rulemaking, the Office proposed amendments to 37 CFR 1.291 to make the requirements for submitting protests against pending patent applications clearer and, where appropriate, more consistent with the requirements of new 37 CFR 1.290. *See Changes to Implement the Preissuance Submission by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 451. While this final rule amends some aspects of 37 CFR 1.291 to streamline the requirements for submitting protests, as proposed, this final rule retains some of the original language of 37 CFR 1.291 because, in view of comments submitted by the public, the Office recognizes that its proposed attempt to harmonize the language of 37 CFR 1.291 with new 37 CFR 1.290 may have resulted in some confusion.

Comments questioned the necessity for maintaining 37 CFR 1.291 in view of new 37 CFR 1.290 if both provided for the same type of third-party submissions. For example, if the concise explanation requirement of 37 CFR 1.291(c)(2) is no different than the concise description of relevance required by 35 U.S.C. 122(e)(2)(A), then a question is raised as to whether it is necessary to maintain 37 CFR 1.291. *See Changes to Implement the Preissuance Submission by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 454.

Protests pursuant to 37 CFR 1.291 are supported by a separate statutory provision, 35 U.S.C. 122(c), which implies the availability of submitting a protest in an application prior to publication, absent the applicant's consent. Further, 37 CFR 1.291 is not deemed duplicative or unnecessary because it permits the submission of information that is not permitted in a third-party submission under 37 CFR 1.290. Specifically, 37 CFR 1.291 provides for the submission of information other than publications, including any facts or information adverse to patentability, and arguments to that effect. *See* MPEP §§ 1901, 1901.02 and 1901.06(VII). That Congress provided for 35 U.S.C. 122(e), which permits concise descriptions of relevance to be submitted after publication, without rescinding 35 U.S.C. 122(c) evidences Congressional intent to supplement, not eviscerate, protests under 35 U.S.C. 122(c).

To eliminate any confusion, this final rule retains the language of 37 CFR 1.291(c)(2) requiring a protest to include a ''concise explanation of the relevance'' of each item of information submitted as opposed to the proposed ''concise description of the asserted relevance'' and highlights a distinction between the concise explanation required under 37 CFR 1.291 for protests and the concise description required by 35 U.S.C. 122(e) for preissuance submissions. Unlike the concise description of relevance required by 35 U.S.C. 122(e) for a preissuance submission, which is limited to a description of a document's relevance, the concise explanation for a protest under 37 CFR 1.291 allows for arguments against patentability.

Additionally, the proposed addition of a reference to 35 U.S.C. 122(b) in the 37 CFR 1.291(b) requirement that a protest be filed prior to the date the application was published under 37 CFR 1.211 has not been retained in this final rule in view of comments regarding whether the inclusion of 35 U.S.C. 122(b) suggested that an earlier publication by the World Intellectual Property Organization (WIPO) of an international application designating the U.S. could trigger the end of the 37 CFR 1.291(b) time period for an application which entered the national stage from the international application after compliance with 35 U.S.C. 371. Because there has been no change in Office policy that a publication by the Office under 37 CFR 1.211 triggers the end of the time period under 37 CFR 1.291(b) for filing a protest, absent an earlier notice of allowance, the proposed reference to 35 U.S.C. 122(b) has not been retained, thereby confirming and clarifying current Office practice that an earlier publication of the application by WIPO would not prevent a protest from being filed in accordance with 37 CFR 1.291(b).

General Discussion of Implementation: A third-party submission under 37 CFR 1.290 may be made in any non-provisional utility, design, or plant application, as well as in any continuing application. These submissions may not be made in reissue applications or reexamination proceedings.

The Office has developed a dedicated Web-based interface to permit third-party submissions under new 37 CFR 1.290 to be filed electronically. Third parties can access the preissuance submissions Web-based interface by selecting the preissuance submissions filing option in the Office's electronic filing system—Web (EFS-Web). Additionally, third-party submissions may be filed in paper via first-class mail, United States Postal Service (USPS) Express Mail service pursuant to 37 CFR 1.10, or delivery by hand. Facsimile transmission of third-party submissions is not permitted. *See* 37 CFR 1.6(d)(3).

When filing a third-party submission electronically, a third party will receive immediate, electronic acknowledgment of the Office's receipt of the submission. When filing a third-party submission in paper, a third party may include a self-addressed postcard with the submission to receive an acknowledgment by return receipt postcard that a third-party submission has been received. In either case, the electronic acknowledgment or return receipt postcard is not an indication that the third-party submission is compliant or has been entered; rather, it merely shows Office receipt of the submission.

Third-party submissions, whether submitted in paper or electronically via the dedicated Web-based interface, will not be automatically entered into the electronic image file wrapper (IFW) of an application, *i.e.,* will not be made of record in the application. Instead, third-party submissions submitted by third parties will be reviewed by the Office to determine compliance with 35 U.S.C. 122(e) and 37 CFR 1.290 before being entered into the IFW. Third parties are encouraged to file third-party submissions electronically via the dedicated Web-based interface because the Office plans to automatically verify the timeliness of a submission, as well as some of the content of a submission (*e.g.,* U.S. patent and published patent application data). Electronic filing via the dedicated Web-based interface will be the most efficient means of making compliant third-party submissions available to an examiner for consideration, as compliant third-party submissions filed in paper will experience a delay in entry due to the additional processing required for scanning and indexing of paper submissions into electronic form. Additionally, third parties filing third-party submissions electronically via the dedicated Web-based interface will receive immediate, electronic acknowledgment of the Office's receipt of the submission, instead of waiting for the Office to mail a return receipt postcard when provided with a paper submission.

The EFS-Web Legal Framework previously prohibited third-party submissions under 37 CFR 1.99 from being filed electronically in patent applications because documents filed electronically via EFS-Web were instantly loaded into the IFW. *See Legal Framework for Electronic Filing System—Web (EFS-Web),* 74 FR 55200, 55202, 55206-7 (October 27, 2009). Because third-party submissions filed electronically in EFS&-Web via the dedicated Web-based interface for preissuance submissions will be screened for compliance with the requirements of 35 U.S.C. 122(e) and 37 CFR 1.290 before being entered into the IFW of an application, the EFS-Web Legal Framework will be revised to permit such submissions. Third parties are cautioned that electronically filing a third-party submission other than via the dedicated Web-based interface for preissuance submissions is prohibited (*i.e.,* a third party must select the ''Third-Party Preissuance Submission under 37 CFR 1.290'' option in EFS-Web). Additionally, the EFS-Web Legal Framework continues to prohibit protests under 37 CFR 1.291 from being filed electronically in patent applications.

The Office has established procedures to complete its compliance determination, for both paper and electronic submissions, promptly following receipt of the submission so that compliant third-party submissions will be quickly entered into the IFW and made available to the examiner for consideration. Third-party submissions filed in paper, however, will incur more processing delay than submissions filed electronically via the dedicated Web-based interface for preissuance submissions due to the scanning and indexing process.

Third-party submissions that are not compliant with the statute will not be entered into the IFW of an application or considered, and will be discarded. Also, the Office will not refund the required fees in the event a third-party submission is determined to be non-compliant. The statutory time period for making a third-party submission will not be tolled by an initial non-compliant submission. The Office will not set a time period for a third party to file a corrected third-party submission. Additionally, the Office will not accept amendments to a non-compliant submission that was previously filed. Instead, a third party who previously filed a non-compliant submission may file another complete submission, provided the statutory time period for filing a submission has not closed.

If the third party provides an electronic mail message (email) address with a third-party submission, whether filed electronically or in paper, the Office intends to notify the third-party submitter of such non-compliance at the email address provided and to include the reason(s) for non-compliance (*e.g.,* a document was listed improperly, a copy of a document was not submitted, a concise description was not provided for a document, etc.). No notification will be issued where a third party does not provide an email address with the submission. Neither the notification nor the non-compliant third-party submission will be made of record in the application. The Office intends to provide such notification as a result of numerous comments the Office received regarding the Office's proposal to not notify a third party of a non-compliant third-party submission.

Third parties are not required to serve the applicant with a copy of the third party submission. However, the Office intends to notify the applicant upon entry of a compliant third-party submission in their application file where the applicant participates in the Office's e-Office Action program. Such notification is being provided as a result of numerous comments the Office received regarding the Office's proposal to not directly notify applicants of the entry of a third-party submission in an application. In order to receive such notification, the applicant must participate in the Office's e-Office Action program, as such notification will only be provided via email to program participants. The contents of a compliant third-party submission will be made available to the applicant via its entry in the IFW of the application. An applicant may view non-patent documents identified in a third-party submission document list via the Office's private Patent Application Information Retrieval (PAIR) system. By not requiring service of third-party submissions on the applicant, the Office is underscoring that such third-party submissions will not create a requirement on the part of the applicant to independently file the submitted documents with the Office in an information disclosure statement (IDS). Additionally, the Office is seeking to prevent challenges regarding whether service of a third-party submission was proper from negatively impacting the pendency of the application.

35 U.S.C. 122(e) does not limit third-party preissuance submissions to pending applications. A third-party submission made within the statutory time period, and otherwise compliant, will be entered even if the application to which the submission is directed has been abandoned. An examiner will not consider such third-party submission unless the application resumes a pending status (*e.g.,* the application is revived, the notice of abandonment is withdrawn, etc.). The abandonment of an application will not, however, toll the statutory time period for making a

third-party submission. For example, if prior to publication an application goes abandoned because the applicant fails to timely respond to a first rejection of any claim, and the application is later revived, the time period for making a third-party submission will run until the earlier of the date of a notice of allowance or the date that is six months after the application's publication date. Additionally, a third-party submission made within the statutory time period, and otherwise compliant, will be entered even if the application to which the submission is directed has not been published, for example, due to a non-publication request filed under 35 U.S.C. 122(b)(2)(B)(i) and § 1.213.

Compliant third-party submissions will be considered by the examiner when the examiner next takes up the application for action following the entry of the third-party submission into the IFW. An examiner will consider the documents and concise descriptions submitted in a compliant third-party submission in the same manner that the examiner considers information and concise explanations of relevance submitted as part of an IDS. Similarly, examiner consideration of a document and its accompanying concise description of relevance in a third-party submission does not mean that the examiner agrees with the third party's position regarding the document, only that the examiner considered the publication and its accompanying description. Generally with the next Office action, a copy of the third party's listing of documents with an indication of the examiner's consideration (*e.g.,* an initialed form PTO/SB/429) will be provided to the applicant. Documents from a third-party submission that were considered by the examiner will be printed on the patent, similar to the way documents from an IDS that were considered by the examiner are printed on the patent. Accordingly, an applicant need not file an IDS to have the same documents that were previously submitted by a third party as part of a compliant third-party submission considered by the examiner in the application. The Office is updating its existing information technology (IT) systems to distinguish considered third-party submission documents on an issued patent from documents cited by the applicant and by the examiner.

Examiners will acknowledge in the record of the patent application the examiner's consideration of the documents submitted. This acknowledgment will be made in a manner similar to that of the examiner's consideration of applicant-submitted documents filed as part of an IDS. For example, the examiner may indicate at the bottom of each page of a third-party submission ''All documents considered except where lined through,'' along with the examiner's electronic initials and the examiner's electronic signature on the final page of the submission. *See, e.g.,* MPEP § 609.05(b). Such indication by the examiner placed at the bottom of each page of a third-party submission will mean that the examiner has considered the listed documents and their accompanying concise descriptions. While every effort will be made to ensure that only compliant third-party submissions are entered for an examiner's consideration, in the unlikely event an examiner cannot consider a listed document, the examiner will strike through the document to indicate that the examiner did not consider either the document or its accompanying concise description. If the examiner does not cite the stricken document on a form PTO–892, the applicant may file an IDS to have the document considered, if deemed necessary. Because the prosecution of a patent application is an *ex parte* proceeding, no response from a third party with respect to an examiner's treatment of the third-party submission will be permitted or considered.

Since it would be advantageous for examiners to have the best art before them prior to issuing the first Office action on the merits, and because a first action allowance in the application could close the time period for making a preissuance submission under 35 U.S.C. 122(e), third parties should consider providing any third-party submission at the earliest opportunity. Additionally, because highly relevant documents can be obfuscated by voluminous submissions, third parties should limit any third-party submission to the most relevant documents and should avoid submitting documents that are cumulative in nature. Third parties need not submit documents that are cumulative of each other or that are cumulative of information already under consideration by the Office. Nonetheless, in some instances, third parties may deem it necessary to submit a document in an application that was previously made of record in the application, where the third party has additional information regarding a document that was not previously considered. Third parties are reminded that 35 U.S.C. 122(e) requires that the documents submitted be ''of potential relevance to the examination of the application'' and that the relevance of each document submitted must be provided in an accompanying concise description.

The Director has set the fees for third-party submissions to recover costs to the Office for third-party submissions to the Office. 35 U.S.C. 122(e) expressly provides for ''such fee as the Director may prescribe.'' The Office is setting fees for third-party submissions in this final rule pursuant to its authority under 35 U.S.C. 41(d)(2), which provides that fees for all processing, services, or materials relating to patents not specified in 35 U.S.C. 41 are to be set at amounts to recover the estimated average cost to the Office of such processing, services, or materials. *See* 35 U.S.C. 41(d)(2). The prior practice (37 CFR 1.99) provided for a third-party submission of up to ten documents for the fee set forth in 37 CFR 1.17(p) (currently $180.00). The Office expects the processing costs to the Office for third-party submissions under new 37 CFR 1.290 to be equivalent to the processing costs to the Office for submissions under former 37 CFR 1.99. Accordingly, the Office has determined that the fee set forth in 37 CFR 1.17(p) will also be applicable to third-party submissions under 37 CFR 1.290 such that the fee set forth in 37 CFR 1.17(p) will be required for every ten documents, or fraction thereof, listed in each third-party submission.

The Office is providing an exemption from this fee requirement where a third-party submission lists three or fewer total documents and is the first third-party submission by a third party or a party in privity with the third party, in a given application. The Office is providing this fee exemption for the first third-party submission in an application by a third party containing three or fewer total documents because the submission of a limited number of documents is more likely to assist in the examination process and thus offset the cost of processing the submission. Moreover, keeping the size of the fee exempted submission to three or fewer total documents will help to focus the attention of third parties on finding and submitting only the most relevant art to the claims at hand. Where one third party takes advantage of the fee exemption in an application, another third party is not precluded from also taking advantage of the fee exemption in the same application provided that the third parties are not in privity with each other.

The fees set or adjusted in this notice will subsequently be revisited and may be proposed to be set or adjusted in a notice of proposed rulemaking under section 10 of the AIA.

Discussion of Specific Rules

The following is a discussion of the amendments to Title 37 of the Code of Federal Regulations, part 1, that are implemented in this final rule:

Section 1.6: Section 1.6(d)(3) is amended to provide that facsimile transmissions are not permitted for third-party submissions under § 1.290, to which no benefit of a certificate of mailing or transmission will be given pursuant to § 1.8(a)(2)(i)(I).

Section 1.8: Section 1.8(a)(2)(i)(C) is amended to replace the reference to the ''Board of Patent Appeals and Interferences'' with ''Patent Trial and Appeal Board.'' Sections 1.8(a)(2)(i)(B) and §§ 1.8(a)(2)(i)(G) through 1.8(a)(2)(i)(J) are added to identify additional situations where the procedure of § 1.8(a) does not apply. For instance, the procedure of § 1.8(a) does not apply to papers filed in trials before the Patent Trial and Appeal Board governed by § 42.6(b); the filing of a written declaration of abandonment under § 1.138; the filing of any of the papers required for a submission under § 1.217 for publication of a redacted copy of an application; the filing of the papers required for making a third-party submission under § 1.290; and the calculation of any period of adjustment, as specified in § 1.703(f).

Section 1.17: Section 1.17(j) is removed to eliminate the document submission fee pertaining to § 1.292 and is reserved. Section 1.17(p) is amended to replace the reference in the document submission fee to former § 1.99 with a reference to new § 1.290.

Section 1.99: Section 1.99 is removed and reserved. Section 1.99 is unnecessary because § 1.290 provides for third-party submissions of patents, published patent applications, and other printed publications to the Office for consideration and inclusion in the record of a patent application, with a concise description of the relevance of each document being submitted and within time periods that are the same or greater than those permitted under former § 1.99.

Section 1.290: Section 1.290(a) provides that a third party may submit, for consideration and entry in the record of a patent application, any patents, published patent applications, or other printed publications of potential relevance to the examination of the application if the submission is made in accordance with 35 U.S.C. 122(e) and § 1.290. Any member of the public, including private persons, corporate entities, and government agencies, may file a third-party submission under § 1.290. A third-party submission may also be filed by an attorney or other representative on behalf of an unnamed real party in interest, because § 1.290 does not require that the real party in interest be identified as such identification might discourage some third parties from making a third-party submission or invite challenges based on allegations of misidentification that could delay the prosecution of an application. The submitter of a third-party submission, however, will be identified in view of the signature requirement in § 1.4 for papers filed in a patent application, which require a person's signature. Third-party submissions are required to be signed because §§ 1.290(d)(5) and (g) require statements by the party making the submission.

Because § 1.290(a) requires that third-party submissions be directed to patent applications, the Office will not accept third-party submissions directed to issued patents. Such submissions should be filed in accordance with § 1.501. Third-party submissions under § 1.290 may be directed to non-provisional utility, design, and plant applications, as well as to continuing applications. Because 35 U.S.C. 122(e) is limited to preissuance submissions, a third party may not file a submission under § 1.290 in post-issuance proceedings, such as reexamination proceedings and reissue applications. Where a submission is filed under § 1.290 in a reissue application, the Office will process the submission as a protest under § 1.291 because, while a concise explanation of relevance under § 1.291 allows for arguments against patentability, such as proposed rejections of the claims, it does not require that such arguments be raised. Therefore, a third-party submission that would otherwise be compliant under § 1.290 will be entered into the record of a reissue application as a protest under § 1.291.

35 U.S.C. 122(e) provides for preissuance submissions to be made for consideration and inclusion ''in the record of a patent application'' and does not preclude third parties from making preissuance submissions in unpublished applications. Therefore, § 1.290(a) does not require that the application to which a submission is directed be published. For example, the Office will enter a compliant third-party submission directed to an application in which a nonpublication request has been filed pursuant to 35 U.S.C. 122(b)(2)(B)(i) and § 1.213. Further, because 35 U.S.C. 122(e) does not preclude third parties from making submissions in abandoned applications, § 1.290(a) does not require that the application be pending and, therefore, permits third-party submissions to be filed in an abandoned application.

Section 1.290(a) limits the type of information that may be submitted to patents, published patent applications, and other printed publications of potential relevance to the examination of a patent application. For example, a submission under § 1.290 could include litigation papers and court documents not subject to a court-imposed protective or secrecy order, if they qualify as publications, but must not include documents that are subject to a court-imposed protective or secrecy order or include trade secret information, unpublished internal documents, or other non-patent documents which do not qualify as ''printed publications.'' *See* MPEP § 2128.

Because 35 U.S.C. 122(e) does not limit the type of information that may be submitted to only that which is prior art, there is no requirement in § 1.290(a) that the information submitted be prior art documents in order to be considered by the examiner. Further, § 1.290(a) does not require a third party to indicate whether a listed document is or is not asserted to be prior art. For those documents where the date of publication is not apparent from a review of the document, the third party may provide information regarding the publication date of the document in its accompanying concise description of relevance.

Similarly, 35 U.S.C. 122(e) does not limit submissions to publications that are not already of record in a patent application. As a result, § 1.290(a) does not prohibit third-party submissions including patents, published patent applications, or other printed publications that are already of record in an application where the submission is otherwise compliant.

Further, while it would be a best practice for third parties not to submit documents that are cumulative of each other or that are cumulative of information already under consideration by the Office, § 1.290(a) does not explicitly prohibit cumulative submissions because it has been the Office's experience that identifying purely cumulative submissions is difficult where a submission includes both a publication and a description of the publication's relevance. For example, a document submitted may appear on its face to be cumulative of information already of record, but the description of relevance may provide additional information with respect to the document such that the submission of the document, together with the concise description of relevance, is not cumulative of information already of record.

The standard under § 1.290(a) for the documents submitted to be of ''potential relevance to the examination of the application'' is imposed by 35 U.S.C. 122(e)(1). This standard requires the submitter to believe the documents being submitted are relevant to the extent that the submitter can provide the concise description of the asserted relevance of each document submitted as required by 35 U.S.C. 122(e).

Section 1.290(a) also provides that a third-party submission may not be entered or considered by the Office if any part of the submission is not in compliance with 35 U.S.C. 122(e) and § 1.290. The Office will enter a third-party submission that is compliant with both 35 U.S.C. 122(e) and § 1.290; however, any part of a third-party submission that is non-compliant with respect to the requirements of 35 U.S.C. 122(e), whether or not the third-party submission is otherwise compliant with § 1.290, will prevent entry of the entire third-party submission into the record. By contrast, a third-party submission that is compliant with 35 U.S.C. 122(e), but non-compliant with some requirement of § 1.290, may be entered into the record if the error is of such a minor character that, in the opinion of the Office, it does not raise an ambiguity as to the content of the submission. In any event, the Office will either enter or not enter the entire submission and will not attempt to enter portions of partially compliant submissions. The determination of whether to enter or not to enter a submission that partially complies with respect to a requirement of § 1.290 will be at the sole discretion of the Office. The Office will not set a time period for a third party to file a corrected third-party submission. Additionally, the Office will not accept amendments to non-compliant submissions that were previously filed. Instead, a third party who previously filed a non-compliant submission may file another complete submission, provided the statutory time period for filing a submission has not closed.

Section 1.290(b) sets forth the time periods in which a third party may file a third-party submission. Under § 1.290(b), any third-party submission must be filed prior to the earlier of: (1) The date a notice of allowance under § 1.311 is given or mailed in the application; or (2) the later of: (i) Six months after the date on which the application is first published by the Office under 35 U.S.C. 122(b) and § 1.211, or (ii) the date the first rejection under § 1.104 of any claim by the examiner is given or mailed during the examination of the application.

The time periods provided for in § 1.290(b) are statutory and cannot be waived. Thus, the Office cannot grant any request for extension of the § 1.290(b) time periods. Also, third-party submissions must be filed prior to, not on, the dates identified in §§ 1.290(b)(1) and (b)(2). A third-party submission under § 1.290 is filed on its date of receipt in the Office as set forth in § 1.6. Pursuant to § 1.290(i), the certificate of mailing or transmission provisions of § 1.8 do *not* apply to a third-party submission under § 1.290; however, the USPS Express Mail service provisions of § 1.10 do apply to a third-party submission under § 1.290. Additionally, facsimile transmission of third-party submissions is not permitted. *See* § 1.6(d)(3). Third-party submissions that are not timely filed will not be entered or considered and will be discarded.

The § 1.290(b)(2)(i) time period will be initiated only by publications ''by the Office'' under 35 U.S.C. 122(b) and § 1.211, and will not be initiated by a publication by WIPO. Thus, an earlier publication by WIPO of an international application designating the U.S. will not be considered a publication that will initiate the § 1.290(b)(2)(i) time period for an application which entered the national stage from the international application after compliance with 35 U.S.C. 371.

The § 1.290(b)(2)(ii) time period will be initiated by the date the first rejection under § 1.104 of any claim by the examiner is given or mailed during the examination of the application. ''Given'' refers to the electronic notification of an Office action that replaces postal mailing of an Office action for applicants participating in the Electronic Office Action Notification (e-Office Action) program. The § 1.290(b)(2)(ii) time period will not be initiated, for example, by a first Office action that only contains a restriction requirement or where the first Office action is an action under *Ex parte Quayle,* 1935 Dec. Comm'r Pat. 11 (1935). The filing of a request for continued examination (RCE) does not preclude a third-party submission from being filed, if the filing of the third-party submission would otherwise be within the time periods set forth in § 1.290(b)(2). Nor does the filing of an RCE reset the § 1.290(b)(2)(ii) time period for filing a third-party submission.

Section 1.290(c) requires a third-party submission to be made in writing. In the notice of proposed rulemaking, the Office proposed to require under § 1.290(c) that each page of a third-party submission identify the application to which the third-party submission is directed by application number, except for the copies of the documents being submitted. *See Changes to Implement the Preissuance Submission by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 452. In view of comments submitted by the public expressing concern that such a requirement would be overly burdensome, § 1.290(e) of this final rule relaxes the requirement for identifying the application number of the application to which the submission is directed by only requiring the identification on each page of the document list, as opposed to every page of the submission.

Section 1.290(d) identifies the required content of a third-party submission. Section 1.290(d)(1) provides that any third-party submission under § 1.290 must include a document list identifying the documents, or portions of documents, being submitted in accordance with § 1.290(e). Section 1.290(e) sets forth the requirements on how to identify the items in the § 1.290(d)(1) document list. Because § 1.290(d)(1) provides for an item identified in the document list to be either an entire document or a portion of a document, in the case where a lengthy document contains both information of potential relevance to the examination of the application and other information that is not of potential relevance, a third party may choose to identify only the relevant portion of the document (*e.g.,* one chapter of a textbook) in lieu of the entire document where it is practical to do so. Otherwise, the third party should identify the entire document.

The Office is providing a form PTO/SB/429 that is similar to forms PTO/SB/08A and 08B to assist third parties in preparing the document list in accordance with §§ 1.290(d)(1) and (e). Use of this form is recommended for paper submissions. Use of this form will not be necessary for third-party submissions filed electronically via the Office's dedicated Web-based interface for preissuance submissions, as this interface will prompt the third party to complete the fields that are provided on the form and will automatically format the entered information into an electronic version of the form PTO/SB/429.

Section 1.290(d)(2) requires a concise description of the asserted relevance of each item identified in the document list in view of the statutory requirement of 35 U.S.C. 122(e)(2)(A) that each third-party preissuance submission be accompanied by a ''concise description of the asserted relevance of each submitted document.'' A concise description of relevance for an item is a statement of facts regarding the submitted evidence (*i.e.,* the patent, published patent application, or other publication) and will not, itself, be treated as evidence. The concise description should set forth facts, explaining how an item listed is of potential relevance to the examination of the application in which the third-party submission has been filed.

The third party should present the concise description in a format that would best explain to the examiner the relevance of the accompanying document, such as in a narrative description or a claim chart. The statutory requirement for a concise description of relevance should not be interpreted as permitting a third party to participate in the prosecution of an application, as 35 U.S.C. 122(c) prohibits the initiation of a protest or other form of pre-issuance opposition for published applications without the consent of the applicant. Therefore, while a concise description of relevance may include claim charts (*i.e.,* mapping various portions of a submitted document to different claim elements), the concise description of relevance is not an invitation to a third party to propose rejections of the claims or set forth arguments relating to an Office action in the application or to an applicant's reply to an Office action in the application.

The Office is interpreting the requirement for a concise description of relevance liberally because the Office anticipates that third parties will be motivated to provide complete concise descriptions of relevance so as to effectively draw the examiner's attention to the potential relevance of a submitted document to the examination of an application. At a minimum, a concise description of relevance must be more than a bare statement that the document is relevant as such a statement does not amount to a meaningful concise description. As a best practice, each concise description should point out the relevant pages or lines of the respective document, particularly where the document is lengthy and complex and the third party can identify a highly relevant section, such as a particular figure or paragraph. Third parties should refrain from submitting a verbose description of relevance, not only because the statute calls for a ''concise'' description, but also because a focused description is more effective in drawing the examiner's attention to the relevant issues.

For example, a description that includes an introductory paragraph describing the field of technology of a document and a claim chart that maps portions of the document to different claim elements would likely be considered ''concise.'' On the other hand, descriptions that merely repeat in narrative format the same information that is also depicted in a claim chart or that approach the length of the documents themselves will not likely be considered ''concise.

A third party using the Office's dedicated Web-based interface to electronically file a third-party submission may fill in the concise description of relevance field for an item or upload a separate paper with the concise description for the item in lieu of entering the concise description in the field. When filing in paper, a third party should provide the concise description of relevance for an item as a separate paper (as opposed to combining the concise descriptions of relevance for all items into a single paper). Providing, for each concise description of relevance, a separate paper that prominently identifies the item in the document list to which the concise description pertains will help ensure that the screener and the examiner can readily identify it.

Section 1.290(d)(3) requires submission of a legible copy of each item identified in the document list, other than U.S. patents and U.S. patent application publications. *See* § 1.98(a)(2) and MPEP § 609.04(a). Where only a portion of a document is listed as an item in the document list, the third party must only submit a copy of that portion and not a copy of the entire document (*e.g.,* where a particular chapter of a book is listed and not the entire book). Further, when a copy of only a portion of a document is submitted, the third party should also submit copies of pages of the document that provide identifying information (*e.g.,* a copy of the cover, the title page, the copyright information page, etc.). Under § 1.290(d)(3), a third party need not submit copies of U.S. patents and U.S. patent application publications because such documents are readily accessible to examiners. The proposed language ''unless required by the Office'' has not been retained in this final rule as the Office will not be communicating with third parties other than where a return receipt self-addressed postcard is mailed, acknowledging receipt of a third-party submission, and/or an email notification is given to a third party indicating that a third-party submission was found to be non-compliant.

Section 1.290(d)(4) requires an English language translation of any non-English language item identified in the document list. A translation submitted pursuant to § 1.290(d)(4) may be a reliable machine translation and need not be certified. Section 1.290(d)(4) has been clarified in this final rule in view of comments submitted by the public expressing concern regarding a situation where a third party cites and provides a translation for only a portion of a non-English language document but submits a copy of the entire non-English language document. The comments questioned whether an applicant would have a duty to cite and translate the remaining portions of the non-English language document in this situation. Section 1.290(d)(1) provides for the listing of either entire documents or portions of documents, and §§ 1.290(d)(3) and (4) require a copy and translation, respectively, of each item listed pursuant to § 1.290(d)(1). Thus, where only a portion of a non-English language document is listed, a third party must not submit a copy of the entire non-English language document. Rather, the third party must submit a copy of the listed portion of the non-English language document and a translation of only this portion.

Whether filing a third-party submission under § 1.290 in paper or electronically, it would be a best practice for third parties to include an identifying label for each item in the document list and place the identifying label on the accompanying concise description of relevance for the item, on the copy of the item (if submitted), and on the translation of the item (if submitted) so that screeners and examiners can more quickly identify the descriptions of relevance, copies, and translations that correspond to each item in the document list.

Section 1.290(d)(5)(i) requires a statement by the party making the submission that the party is not an individual who has a duty to disclose information with respect to the application (*i.e.,* each individual associated with the filing and prosecution of the patent application) under § 1.56. Such statement is intended to avoid potential misuse of third-party submissions by applicants (*e.g.,* by employing a third-party ''straw man'') to attempt to circumvent the IDS rules.

Section 1.290(d)(5)(ii) requires a statement by the party making the submission that the submission complies with the requirements of 35 U.S.C. 122(e) and § 1.290. To facilitate compliance by third parties, the form PTO/SB/429 and the dedicated Web-based interface for preissuance submissions include the statements required by §§ 1.290(d)(5)(i) and (ii).

Section 1.290(e) sets forth the requirements for identifying the items in the document list pursuant to § 1.290(d)(1). Section 1.290(e) requires the document list include a heading that identifies the list as a third-party submission under § 1.290. The dedicated Web-based interface for electronically filing preissuance submissions will automatically generate a document list that complies with these two requirements of § 1.290(e).

Section 1.290(e) also requires that the document list required by § 1.290(d)(1) identify on each page of the list, the application number (*i.e.,* the series code and serial number) of the application in which the submission is being filed. This requirement is consistent with the requirement set forth in § 1.98(a)(1)(i) for applicant IDS listings. In view of public comments received, this requirement modifies the previously proposed requirement of § 1.290(c) to be less burdensome to the submitter, while achieving the same goals. *See Changes to Implement the Preissuance Submission by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 452.

Section 1.290(e) further requires that U.S. patents and U.S. patent application publications be listed in a separate section from other items in the document list. Separating the listing of U.S. patents and U.S. patent application publications from the listing of other items in the document list will facilitate printing the U.S. patents and U.S. patent application publications considered by the examiner in a third-party submission on the face of the patent.

Sections 1.290(e)(1) through (e)(4) set forth the requirements for identifying the items in the § 1.290(d)(1) document list. Section 1.290(e)(1) requires that each U.S. patent be identified by patent number, first named inventor, and issue date. Section 1.290(e)(2) requires that each U.S. patent application publication be identified by patent application publication number, first named inventor, and publication date. Section 1.290(e)(3) requires that each foreign patent or published foreign patent application be identified by the country or patent office that issued the patent or published the application; the applicant, patentee, or first named inventor; an appropriate document number; and the publication date indicated on the patent or published application. The requirement for U.S. patents and patent application publications to be identified by first named inventor, and for foreign patents and published patent applications to be identified by the applicant, patentee, or first named inventor, is intended to aid in identifying the items in the document list in the event the application number, publication number, or other appropriate document number data is in error, for example, inadvertently transposed. In view of comments submitted by the public expressing concern that the identity of the first named inventor of a foreign patent/published patent application may not be known in some instances, § 1.290(e)(3) of this final rule offers more flexibility in permitting identification of foreign patents and published patent applications by expanding the identification to also include the applicant or patentee, in addition to the first named inventor. *See Changes to Implement the Preissuance Submission by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 452.

Section 1.290(e)(4) requires that each non-patent publication be identified by author (if any), title, pages being submitted, publication date, and where available, publisher and place of publication. Section 1.290(e)(4) does not preclude a third party from providing additional information not specified in § 1.290(e)(4) (*e.g.,* journal title and volume/issue information for a journal article). In view of comments submitted by the public expressing concern that publisher and place of publication information may not be available in some instances, § 1.290(e)(4) of this final rule emphasizes that such information need only be provided where it is available.

Further, in view of comments submitted by the public that the Office should be more critical as to whether a document submitted is actually a publication, the qualifier ''where available'' no longer applies to each item of information specified in § 1.290(e)(4) in this final rule. *See Changes to Implement the Preissuance Submission by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 452–53. In order for a submission to be compliant under 35 U.S.C. 122(e) and § 1.290, each item submitted for consideration and inclusion into the file of a patent application must be a publication. Thus, § 1.290(e)(4) requires that, if no publication date is known, the third party must provide evidence of publication. As a result, a third-party submission must either include items that are *prima facie* publications, or evidence that establishes that they are publications.

Where the actual publication date of a non-patent document is not known, a third party must, at a minimum, provide a date of retrieval or a time frame (*e.g.,* a year, a month and year, a certain period of time) when the document was available as a publication for purposes of identifying the document by publication date pursuant to § 1.290(e)(4), in addition to including evidence that establishes the document as a publication. In such situations, the third party may submit evidence in the form of affidavits, declarations, or any other appropriate format. For example, a third party might submit as evidence of publication a printout from a Web site showing that the content of the Web site was publicly available at least as of the date retrieved shown on the printout, or screenshots from a Web site that establish the content of the Web site on a particular date. In another example, a third party might submit a company's undated marketing brochure with a declaration from an employee of the company stating that the brochure was publicly distributed at a trade show on a particular date. Such evidence will not be counted toward the item count for fee purposes, unless the evidence is in the form of a patent document or other printed publication and the evidence, itself, is listed and submitted for consideration by the examiner. In some instances, the copy of the document provided pursuant to § 1.290(d)(3) may itself be the evidence, such as where a printout from the Web site showing the date the document was retrieved is provided to satisfy the copy requirement. Further, if the patent applicant has evidence that a document filed by a third party is, in fact, not a publication, the applicant can challenge the determination by the Office that a document is a publication in a response to a rejection applying the document in question.

Section 1.290(f) requires payment of the fee set forth in § 1.17(p) for every ten items or fraction thereof listed in the document list, except where the submission is accompanied by the statement set forth in proposed § 1.290(g). The Office will determine the item count based on the § 1.290(d)(1) document list. Thus, if a U.S. patent or a U.S. patent application publication is identified in the document list, but a copy of the item is not submitted (*i.e.,* because a copy is not required), the listed U.S. patent or U.S. patent application publication will be counted toward the document count. If a copy of an item is submitted but the item is not identified in the document list, the item will not be counted or considered and will be discarded. Additionally, if a third party identifies an item in the § 1.290(d)(1) document list that is only a portion of a publication, the portion of the publication will be counted as one item. Further, while a third party is permitted to cite different publications that are all available from the same electronic source, such as a Web site, each such publication listed will be counted as a separate item.

Section 1.290(g) provides an exemption from the § 1.290(f) fee requirement where a third-party submission listing three or fewer total items is the first third-party submission by a third party, or a party in privity with the third party, in a given application. Where one third party takes advantage of the fee exemption in an application, another third party is not precluded from also taking advantage of the fee exemption in the same application as long as the third parties are not in privity with each other. For example, applying the current 37 CFR 1.17(p) fee of $180.00 in accordance with §§ 1.290(f) and (g): (1) No fee would be required for the first third-party submission by a third party containing three or fewer total items; (2) a $180.00 fee would be required for the first third-party submission by a third party containing more than three, but ten or fewer total items; and (3) a $360.00 fee would be required for the first third-party submission by a third party containing more than ten, but twenty or fewer total items. For a second or subsequent third-party submission by the same third party: (1) A $180.00 fee would be required where the second or subsequent third-party submission by the third party contains ten or fewer total items; and (2) a $360.00 fee would be required where the second or subsequent third-party submission by the same third party contains more than ten, but twenty or fewer total items. Note that fees set or adjusted in this notice will subsequently be revisited and may be proposed to be set or adjusted in a notice of proposed rulemaking under section 10 of the AIA.

To implement the fee exemption in § 1.290(g) and avoid potential misuse of such exemption, exemption-eligible third-party submissions must be accompanied by a statement of the third party that, to the knowledge of the person signing the statement after making reasonable inquiry, the submission is the first and only third-party submission in the application by the third party or a party in privity with the third party. To preclude a third party from making multiple third-party submissions in the same application on the same day and asserting that each such submission is the first third-party submission in the application by the third party, the § 1.290(g) statement requires that the submission be the ‘‘first and only’’ third-party submission. This statement will not, however, preclude the third party from making more than one third-party submission in an application, where the need for the subsequent submissions was not known at the time the earlier submission, including the § 1.290(g) statement, was filed with the Office. Such additional submissions would not be exempt from the § 1.290(f) fee requirement.

The Office will not entertain challenges to the accuracy of such third-party statements because, pursuant to § 11.18(b), whoever knowingly and willfully makes any false, fictitious, or fraudulent statements or representations to the Office shall be subject to the penalties set forth under 18 U.S.C. 1001. Section 11.18(b) applies to any paper presented to the Office, whether by a practitioner or non-practitioner.

Section 1.290(h) provides that in the absence of a request by the Office, an applicant need not reply to a third-party submission under § 1.290. Where the Office believes information from applicant is needed, the Office may issue a requirement for information pursuant to § 1.105. In view of public comments received regarding misinterpretations of the Office's use of the term ‘‘duty’’ in the proposed requirement, § 1.290(h) has been revised in this final rule to delete its use. While the comments interpreted the use of the term ‘‘duty’’ in the proposed requirement as an intent to incorporate a statement relative to the duty of disclosure under § 1.56, the use of the term ‘‘duty’’ was in keeping with the general concept that applicants need not comment on third-party submissions based solely on the presence of such submissions.

Section 1.290(i) provides that the provisions of § 1.8 do not apply to the time periods set forth in § 1.290. Third parties may not use a certificate of mailing or transmission in filing a third-party submission under § 1.290. By not according a third-party submission filed by first class mail the benefit of its date of deposit with the USPS pursuant to a § 1.8 certificate of mailing, the Office reduces the potential for papers crossing in the mail. That is, the requirement of § 1.290(h) reduces the risk that a third-party submission, if it was permitted to rely on a certificate of mailing to be timely, would not be identified and entered until after an Office action is mailed. The requirement of § 1.290(h) also encourages third parties to file third-party submissions at their earliest opportunity. Additionally, because facsimile transmission of third-party submissions under § 1.290 is not permitted, the use of a certificate of transmission pursuant to § 1.8 is not applicable. Facsimile transmissions, although not subject to the delay associated with first class mail, are often received in poor quality, which may result in illegible content and cause the submission to be found non-compliant. The use of USPS Express Mail service pursuant to § 1.10 is permitted for third-party submissions under § 1.290 as it carries with it the risk of little, if any, delay. Nonetheless, the fastest and most legible means for transmitting a third-party submission is electronically via the dedicated Web-based interface the Office has developed for these submissions.

Section 1.291: This final rule amends portions of § 1.291 for clarity and also for consistency with new 35 U.S.C. 122(e) and § 1.290, where appropriate.

The proposed addition of a reference to 35 U.S.C. 122(b) in the § 1.291(b) requirement that a protest be filed prior to the date the application was published under § 1.211 has not been retained in this final rule in view of public comments received. *See Changes to Implement the Preissuance Submission by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 451. The comments questioned whether the inclusion of 35 U.S.C. 122(b) suggested that an earlier publication by WIPO of an international application designating the U.S. could trigger the end of the § 1.291(b) time period for an application which entered the national stage from the international application after compliance with 35 U.S.C. 371. Because there has been no change in Office policy that a publication by the Office under § 1.211 triggers the end of the time period under § 1.291(b) for filing a protest, absent an earlier notice of allowance, the proposed reference to 35 U.S.C. 122(b) has not been retained, thereby clarifying that an earlier publication of the application by WIPO would not prevent a protest from being filed in accordance with § 1.291(b).

Section 1.291(b) is amended by including ‘‘given or’’ before ‘‘mailed’’ to provide for electronic notification of the notice of allowance (*i.e.,* via the e-Office action program).

Section 1.291(b)(1) is amended to more clearly define the time period for submitting protests under § 1.291 that are accompanied by applicant consent. Specifically, § 1.291(b)(1) is amended to provide that, if a protest is accompanied by the written consent of the applicant, the protest will be considered if the protest is filed prior to the date a notice of allowance under § 1.311 is being given or mailed in the application. This amendment provides a definite standard for both the Office and third parties and gives more certainty as to when a protest under § 1.291 that is accompanied by applicant consent would or would not be accepted by the Office. Moreover, it is reasonable that the time period for submission ends when a notice of allowance is given or mailed in the application in view of the current publication process. Under the current publication process, final electronic capture of information to be printed in a patent will begin as soon as an allowed application is received in the Office of Data Management, which occurs immediately after the notice of allowance has been given or mailed. *See* MPEP § 1309.

Section 1.291(c) identifies required content of a protest. Section 1.291(c)(1) is amended to provide that any protest under § 1.291 must include an information list identifying the documents, portions of documents, or other information being submitted. Unlike § 1.290(d)(1), which refers to a ''document list'' because a third-party submission under § 1.290 is limited to publications, § 1.291(c)(1) now refers to an ''information list'' because § 1.291 provides for the submission of information other than publications, including any facts or information adverse to patentability. *See* MPEP §§ 1901 and 1901.02. Like § 1.290(d)(1), § 1.291(c)(1) provides for the listing of either entire documents or portions of documents, as deemed appropriate by the protestor. Additionally, § 1.291(c)(1) also provides for the listing of other information.

Sections 1.291(c)(1)(i) through (c)(1)(v) are added to set forth the requirements on how to identify the items in the § 1.291(c)(1) information list, consistent with the requirements set forth in §§ 1.290(e)(1) through (e)(4), where appropriate. Section 1.291(c)(1)(i) requires that each U.S. patent be identified by patent number, first named inventor, and issue date. Section 1.291(c)(1)(ii) requires that each U.S. patent application publication be identified by patent application publication number, first named inventor, and publication date. Section 1.291(c)(1)(iii) requires that each foreign patent or published foreign patent application be identified by the country or patent office that issued the patent or published the application; the applicant, patentee, or first named inventor; an appropriate document number; and the publication date indicated on the patent or published application. The requirement for U.S. patents and patent application publications to be identified by first named inventor, and for foreign patents and published patent applications to be identified by the applicant, patentee, or first named inventor, is intended to aid in identifying the items in the information list in the event the application number, publication number, or other appropriate document number data is, for example, inadvertently transposed.

In view of comments submitted by the public expressing concern that the identity of the first named inventor of a foreign patent/published patent application may not be known in some instances, § 1.291(c)(1)(iii) of this final rule offers more flexibility in permitting identification of foreign patents and published patent applications by the applicant, patentee, or first named inventor. *See Changes to Implement the Preissuance Submission by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 454.

Section 1.291(c)(1)(iv) requires that each non-patent publication be identified by author (if any), title, pages being submitted, publication date, and where available, publisher and place of publication. Section 1.291(c)(1)(iv) does not preclude a protestor from providing additional information not specified in § 1.291(c)(1)(iv) (*e.g.,* journal title and volume/issue information for a journal article). In view of comments submitted by the public expressing concern that publisher and place of publication information may not be available in some instances, § 1.291(c)(1)(iv) of this final rule emphasizes that such information need only be provided where it is available. The qualifier ''where such information is available'' no longer applies to each item of information specified in § 1.291(c)(1)(iv), as proposed, because at least a minimum amount of identifying information must be provided to establish the listed item as a non-patent publication.

Section 1.291(c)(1)(v) requires that each item of ''other information'' be identified by date, if known. This requirement accounts for the submission of information other than patents and publications, including any facts or information adverse to patentability. *See* MPEP §§ 1901 and 1901.02. For example, if a publication date for a document is not known and the document is not being relied upon as a publication, the protestor may list such document as ''other information'' pursuant to 1.291(c)(1)(v).

Section 1.291(c)(2) requires a concise explanation of the relevance of each item identified in the information list. Comments questioned the necessity for maintaining § 1.291 in view of new § 1.290 if both require the third party to comment on the relevance of the items being submitted. For example, if the concise explanation requirement of § 1.291(c)(2) is no different than the concise description of relevance required by 35 U.S.C. 122(e)(2)(A) and § 1.290(d)(2), then a question is raised as to whether it is necessary to maintain § 1.291. *See Changes to Implement the Preissuance Submission by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 454. Unlike the concise description of relevance required by 35 U.S.C. 122(e)(2)(A) and § 1.290(d)(2) for a preissuance submission, the concise explanation for a protest under § 1.291(c)(2) allows for arguments against patentability. To eliminate any confusion, this final rule retains the language of § 1.291(c)(2) in requiring that a protest must include a ''concise explanation of the relevance'' of each item of information submitted as opposed to the proposed ''concise description of the asserted relevance,'' and highlights a distinction between the concise explanation required under § 1.291(c)(2) for protests and the concise description required by 35 U.S.C. 122(e)(2)(A) and § 1.290(d)(2) for preissuance submissions.

Section 1.291(c)(3) requires a legible copy of each item identified in the information list, other than U.S. patents and U.S. patent application publications. Section 1.291(c)(3) is amended to clarify that copies of information submitted must be legible. *See* § 1.98(a)(2) and MPEP § 609.04(a). Section 1.291(c)(3) is also amended to provide that copies of U.S. patents and U.S. patent application publications need not be submitted because such documents are readily accessible to examiners. The proposed language ''unless required by the Office'' has not been retained in this final rule as the Office will not be communicating with protestors other than where a return receipt self-addressed postcard acknowledging receipt of a protest is mailed. Where only a portion of a document is listed as an item in the information list, the protestor must only submit a copy of that portion and not a copy of the entire document (*e.g.,* where a particular chapter of a book is listed and not the entire book). Further, when a copy of only a portion of a document is submitted, the protestor should also submit copies of pages of the document that provide identifying information (*e.g.,* a copy of the cover, the title page, the copyright information page, etc.).

Section 1.291(c)(4) requires an English language translation of any non-English language item identified in the information list. A translation submitted pursuant to § 1.291(c)(4) may be a reliable machine translation and need not be certified. Section 1.291(c)(4) has been clarified in this final rule in view of comments submitted by the public expressing concern regarding a situation where a protestor cites and provides a translation for only a portion of a non-English language document but submits a copy of the entire non-English language document. The comments questioned whether an applicant would have a duty to cite and translate the remaining portions of the non-English language document in this situation. Section 1.291(c)(1) provides for the listing of entire documents or portions of documents, and §§ 1.291(c)(3) and (4) require a copy and translation, respectively, of each item listed pursuant to § 1.291(c)(1). Thus, where only a portion of a non-English language document is listed, a protestor must not submit a copy of the entire non-English language document. Rather, the protestor must submit a copy of the listed portion of the non-English language document and a translation of only this portion.

Section 1.291(f) is amended to provide that in the absence of a request by the Office, an applicant need not reply to a protest under § 1.291. In view of public comments received regarding misinterpretations of the Office's use of the term ''duty'' in the proposed requirement for § 1.290(h), both § 1.290(h) and § 1.291(f) have been revised in this final rule to delete its use. While the comments interpreted the use of the term ''duty'' in the proposed requirement for § 1.290(h) as an intent to incorporate a statement relative to the duty of disclosure under § 1.56, the use of the term ''duty'' in § 1.291(f) was in keeping with the general concept that applicants need not comment on a protest solely because one has been entered into the application.

Section 1.292: Section 1.292 is removed and reserved. The practice of providing a pre-grant public use proceeding as set forth in § 1.292 is no longer considered necessary, and is inefficient as compared to alternative mechanisms available to third parties for raising prior public use, for example, as provided for by § 1.291 protests, where appropriate, and also by section 6 of the AIA which makes available a post-grant review proceeding. Petitions to institute public use proceedings filed under former § 1.292 on or after the effective date of this final rule will not be entered or otherwise treated by the Office. Instead, they will be discarded.

Section 41.202: Section 41.202 is amended to remove a reference to § 1.99 for consistency in view of the removal of § 1.99.

Comments and Response to Comments: As discussed previously, the Office published a notice on January 6, 2012, proposing to change the rules of practice to implement the preissuance submissions by third parties provisions of section 8 of the AIA. *See Changes to Implement the Preissuance Submission by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 448–457. The Office received thirty-six written comments (from intellectual property organizations, academia, industry, law firms, individual patent practitioners, and the general public) in response to this notice. The comments and the Office's responses to the comments follow:

A. Submission Requirements

1. Identification of Documents

Comment 1: A number of comments suggested revising some of the requirements for identifying documents set forth in proposed §§ 1.290(e) and 1.291(c)(1). These suggestions are detailed with the Office's response to this comment.

Response: In response to the comments, the proposed requirements for identifying foreign patents or published foreign patent applications pursuant to §§ 1.290(e)(3) and 1.291(c)(1)(iii) and for identifying non-patent publications pursuant to §§ 1.290(e)(4) and 1.291(c)(1)(iv) have been modified in this final rule. For example, when identifying foreign patents or published foreign patent applications pursuant to §§ 1.290(e)(3) and 1.291(c)(1)(iii), at least one of the applicant, patentee, or first named inventor must be identified. This requirement offers flexibility in identification, such as where a foreign jurisdiction does not require inventors be named or allows inventors to remain anonymous.

Additionally, § 1.290(e)(4) and 1.291(c)(1)(iv) require identification of non-patent publications by publisher and place of publication only where such information is available. With the increasing use of the Internet for publication, many non-patent publications do not identify a publisher or place of publication, so such information need only be provided where it is available. Sections 1.290(e)(4) and 1.291(c)(1)(iv) do not, however, preclude additional identifying information, not specified in the rules, from being provided (*e.g.,* journal title and volume/issue information for a journal article). Section 1.290(e)(4) also requires evidence establishing publication if the date of publication is not available. For example, such evidence might establish a date the document was publicly available.

2. *English language translation of listed non-English language documents:*

Comment 2: A number of comments suggested revising the requirements set forth in proposed §§ 1.290(d)(4) and 1.291(c)(4) requiring a translation of ''all relevant portions'' and ''all the necessary and pertinent parts,'' respectively, of any non-English language document. One comment suggested a third party be required to provide a translation of all portions, or to redact any non-translated portions. The comment stated that if a third party submits a copy of an entire non-English language document and only translates and cites a portion of the document, the applicant may have a duty to translate and cite the remaining portions. Other comments suggested that a full translation of any non-English language document be required so the examiner can determine if the document as a whole stands for the proposition for which it is cited. Alternatively, it was suggested a third party be required to submit any translation in its possession.

Response: Sections 1.290(d)(4) and 1.291(c)(4) have been modified from the proposed rule to clarify that an English language translation of any non-English language item identified in the document or information list, respectively, is required. Sections 1.290(d)(1) and 1.291(c)(1) provide for the listing of entire documents or portions of documents. Sections 1.290(d)(3) and (4) require a copy and translation, respectively, of each item listed pursuant to § 1.290(d)(1), and §§ 1.291(c)(3) and (4) require a copy and translation, respectively, of each item listed pursuant to § 1.291(c)(1). Thus, where only a portion of a non-English language document is listed, a third party or protestor must not submit a copy of the entire non-English language document. Rather, the third party or protestor must submit only a copy of the listed portion of the non-English language document and only a translation of this portion. Where an entire non-English language document is listed, a third party or protestor should submit a copy and a translation of the entire non-English language document.

Any translations submitted pursuant to §§ 1.290(d)(4) and 1.291(c)(4) may be a reliable machine translation and need not be certified. The requirements of §§ 1.290(d)(4) and 1.291(c)(4) are different from the requirement of § 1.98(a)(3)(ii), which requires a copy of any translation of a non-English language document cited in an IDS that is ''within the possession, custody, or control of, or is readily available to any individual designated in § 1.56(c).''

3. Application Number

Comment 3: A number of comments asserted that the requirement of proposed § 1.290(c) to identify the application number on each page of the submission (except for the copies of documents) is unnecessary and burdensome. Several comments stated that the application number should appear on at least the first page of the submission and that, while it may be a best practice to include the application number on each page of the submission, it should not be required.

Response: Based on the comments, the Office understands that the requirement in proposed § 1.290(c) that the application number of the application to which the submission is directed be identified on every page of the submission was overly burdensome. Accordingly, the final rule does not include this requirement. Instead, § 1.290(e) only requires that the document list set forth in § 1.290(d)(1) identify on each page of the list, the application number of the application in which the submission is being filed. This requirement is consistent with the requirement set forth in § 1.98(a)(1)(i) for applicant IDS listings.

B. Documents

1. Corroboration of Documents

Comment 4: One comment suggested the examiner should objectively corroborate submitted documents and be permitted to ignore any documents that cannot be corroborated (*e.g.,* as a publication). The comment suggested the Office should not blindly accept submissions as true and accurate and should entertain challenges to the accuracy of third-party statements that are not objectively verifiable (*e.g.,* a journal article might be verifiable, whereas a marketing pamphlet might be less so).

Response: Submissions filed pursuant to § 1.290 will be reviewed before being forwarded to an examiner for consideration. During this review, the Office will determine if the documents submitted for consideration appear on their faces to be publications. If any of the submitted documents are found not to be a publication, the entire submission will be found not to comply. In such a situation, the submission will not be entered into the patent application file or considered by the examiner and will be discarded. If the submission is determined to be compliant, the publications will be considered by the examiner and entered into the file, as required by 35 U.S.C. 122(e). If the patent applicant, however, has evidence that a document filed by a third party is, in fact, not a publication, then the applicant can challenge the determination by the Office that the document is a publication in response to a rejection applying the document in question.

Comment 5: One comment questioned whether an examiner can request additional information from a third party under § 1.105. The comment suggested it should be at the option of the third party to respond to any such request and that there should be no effect on the original submission if the third party does not comply with the request.

Response: Section 1.105 provides an examiner or other Office employee with the authority to require the submission, from individuals identified under § 1.56(c), or any assignee, of such information as may be reasonably necessary to properly examine or treat a matter. Section 1.290(d)(5)(i) does not permit a third party to be a § 1.56(c) party. An examiner cannot therefore request additional information from a party who makes a third-party submission. The Office does not believe there is a need for a similar mechanism to require further information from third-party submitters as the third parties will be motivated to provide complete submissions that would not likely require further information.

Comment 6: A number of comments suggested evidence should be required to establish the relevant date of documents not in print, such as documents only published electronically on the Internet. One comment suggested the rules explicitly provide for the submission of screenshots from Web sites, such as ''*www.archive.org,*'' that evidence the content of Web pages at specified dates in the past because such screenshots are relevant to novelty considerations under 35 U.S.C. 102 and can be readily verified.

Response: Section 1.290(e)(4) requires non-patent publications be identified by author (if any), title, pages being submitted, publication date, and where available, publisher and place of publication. Section 1.290(e)(4) further requires that, if no publication date is known, the third party must provide evidence of publication. This requirement recognizes that some documents, such as the content of a Web site, may not indicate a date of publication. *See* MPEP 2128. Section 1.290(e)(4) does not require the evidence of publication be submitted in a particular format. For example, the third party might submit as evidence of publication a printout from the Web site showing that the content of the Web site was publicly available at least as of the date retrieved shown on the printout, or screenshots from a Web site that establish the content of the Web site on a particular date (like www.archive.org). In some instances, the copy of the document provided pursuant to § 1.290(d)(3) may itself be the evidence, such as where a printout from the Web site showing the date the document was retrieved is provided to satisfy the copy requirement. Each item of evidence submitted will be evaluated with respect to both its authenticity and its persuasiveness.

2. Prior Art Documents

Comment 7: A number of comments requested clarification as to whether the proposed rules allow submissions of documents that are not prior art to the patent application. These comments also suggested the rules not permit submission of non-prior art documents. A number of comments also proposed adding a requirement that the third party indicate whether the documents submitted are prior art or are not prior art.

Response: Pursuant to 35 U.S.C. 122(e), ''[a]ny third party may submit for consideration and inclusion in the record of a patent application, any patent, published patent application, or other printed publication of potential relevance to the examination of the application.'' The statute does not limit the publications that can be submitted to prior art publications. Accordingly, § 1.290(a) does not require that publications be prior art in order to be considered by an examiner. Additionally, the Office is not requiring a third party to indicate whether a listed document is or is not asserted to be prior art because a mistake in complying with such a requirement could cause a submission to be found not in compliance with § 1.290. The Office believes the benefit of such a statement is outweighed by the potential that the submission will be found not to comply should the Office disagree with the third party.

Comment 8: A number of comments requested further clarification on what documents would be admitted or excluded as ''other printed publications'' under proposed

§ 1.290(a). These comments also requested that publicly accessible documents of potential relevance to the examination of the application be permitted, such as litigation papers not subject to a protective order and otherwise available to the public.

Response: Section 1.290(a) does not limit the type of printed publications that can be filed as part of a compliant submission. Litigation papers and court documents not subject to a court-imposed protective or secrecy order can be submitted for consideration and entry under § 1.290(a) if they qualify as publications. *See* MPEP § 2128. Documents that are subject to a court-imposed protective or secrecy order, documents that include trade secret information, unpublished internal documents, or other non-patent documents that do not qualify as publications should *not* be submitted for consideration and entry under § 1.290(a).

Comment 9: A number of comments suggested amending proposed § 1.290(e)(4) to clarify what is required to establish the date of a non-patent publication asserted to be prior art if the date is ''not apparent from the document.''

Response: This final rule revises the requirement of proposed § 1.290(e)(4) that the third party bears the burden of establishing the date of a non-patent publication asserted to be prior art if the date is not apparent from the document. A compliant submission pursuant to § 1.290 requires that all documents for consideration and inclusion into the file of an application be publications. Thus, § 1.290(e)(4) requires a third party to provide evidence of publication where the publication date of a document is not known, regardless of whether the document is asserted to be prior art. As a result, third parties making such a submission must either submit documents that are *prima facie* publications or evidence that establishes that they are publications. The Office is not requiring specific types of evidence to prove publication, but where the actual publication date of a non-patent document is not known, a third party should, at a minimum, provide a date of retrieval or a timeframe (*e.g.,* a year, a month and year, a certain period of time) when the document was available as a publication for purposes of identifying the document by publication date pursuant to § 1.290(e)(4), in addition to including evidence that establishes the document as a publication. In such situations, the evidence that may be submitted by a third party includes affidavits or declarations, or may be present on the copy of the document itself submitted pursuant to § 1.290(d)(3).

3. Submissions Related to Documents Already of Record

Comment 10: A number of comments requested clarification as to whether the proposed rules allow submissions and descriptions of relevance in connection with patents, published patent applications, or other printed publications that are already of record in a patent application.

Response: 35 U.S.C. 122(e) states: ''Any third party may submit for consideration and inclusion in the record of a patent application, any patent, published patent application, or other printed publication of potential relevance to the examination of the application.'' The statute does not limit submissions to publications that are not already of record in a patent application. Accordingly, new § 1.290 does not place this limitation on the publications that can be submitted. As a result, third-party submissions pursuant to § 1.290 can include patents, published patent applications, or other printed publications that are already of record in an application where the submission is otherwise compliant.

Comment 11: Some comments suggested amending proposed § 1.290 to prohibit cumulative submissions. One comment suggested that where more than three documents are submitted, the third party should be required to explain which documents, up to three, are most relevant and why any other submitted documents are not merely cumulative.

Response: While it would be a best practice for third parties not to submit documents that are cumulative of each other or that are cumulative of information already under consideration by the Office, § 1.290 does not explicitly prohibit cumulative submissions because it has been the Office's experience that identifying purely cumulative submissions is difficult, such as where the submission includes both a publication and a description of the publication's relevance. Where a concise description of relevance is not identical to another party's concise description of relevance, and the submission is otherwise compliant, the submission will be entered into the file of the application. Thus, while a document submitted may appear on its face to be cumulative of information already of record, its accompanying concise description of relevance may provide additional information with respect to the document, such that the submission of the document, together with the concise description of relevance of the document, is not cumulative of information already of record. For example, a submission including documents cited in the background section of an application would not be considered cumulative if accompanied by concise descriptions of relevance that provide additional information regarding the documents.

4. Limits on Submissions

Comment 12: Several comments raised concerns regarding the potential for third parties to ''flood'' an application with third-party submissions. One comment suggested that, with no contemplated limit on the number of third-party submissions that may be made in an application, an examiner could become ''buried'' and, as a result, potentially miss highly relevant art. Another comment asserted that the fee structure alone may not go far enough to prevent harassment where the third party is allowed to remain anonymous.

Response: Third-party submitters are subject to § 11.18(b)(2), which provides that a party presenting a paper to the Office, whether a practitioner or non-practitioner, is certifying that ''to the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, [t]he paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office.'' Accordingly, Office rules already prohibit third parties from purposely ''flooding'' an application with third-party submissions in order to cause unnecessary delay in the prosecution of the application. Moreover, the statute does not impose any limit on the number of third-party submissions that may be filed in an application. The Office, in turn, has not imposed any limit on the number of third-party submissions that may be filed in applications so as not to preclude examiners from having all relevant information before them when examining applications. To limit the number of third-party submissions in an application might preclude some third parties from filing potentially relevant information. Further, because highly relevant documents can be obfuscated by voluminous submissions, third parties should be motivated to limit any third-party submission to only the most relevant documents and should not be motivated to ''flood'' the Office with irrelevant submissions.

Comment 13: Some comments suggested the Office limit the number of pages in a third-party submission that will be considered by an examiner. For example, one comment suggested amending § 1.290(f) to require a third party to identify up to 50 of the most relevant pages of the submitted documents where the cumulative number of pages of the submitted documents, other than patents or published patent applications, exceeds 50 pages.

Response: The Office has not imposed any limit on the total number of pages that may be submitted in a third-party submission because, to do so, could prevent an examiner from considering all of the relevant information submitted. Further, if a third party deems more than 50 pages in a submission to be relevant to the examination of an application, an examiner should not be precluded from reviewing all of the pages of information deemed to be relevant. Nevertheless, a third party should avoid making a submission unnecessarily voluminous as voluminous submissions tend to obfuscate the most relevant information.

5. Electronic Sources

Comment 14: One comment requested clarification regarding what is considered a separate document on a Web site. The comment questioned whether each page of a single Web site would constitute a separate document.

Response: What constitutes a separate document on a Web site will vary case-by-case. For example, if a single article posted on a Web site spans multiple Web pages, each such Web page would not constitute a separate document. On the other hand, if a Web site includes different articles and each appears on a different Web page, then each such Web page would constitute a separate document, even though each article is available from the same Web site.

6. Third Party Participation

Comment 15: One comment suggested the Office not permit third-party submissions of documents that were prepared by the third party solely to address patentability issues in an application. The comment suggested the Office require a statement that the third party or its privies did not draft the cited documents after the application was filed to contest patentability.

Response: Third parties are cautioned that submission of documents drafted after the application was filed solely to contest patentability may result in non-entry of an entire third-party submission. A concise description of relevance under § 1.290 is not an invitation for third-party participation in the examination of an application. Thus, the concise description of relevance of a document, which was prepared by a third party after an application was filed solely to contest the patentability of the application, would likely be deemed an improper attempt by the third party to impermissibly participate in the examination of the application because the relevance of the document being described is its discussion of the patentability of the application. As a result of the improper concise description, the entire third-party submission that includes such document would not be entered.

C. Consideration of Documents

1. Consideration by an Examiner

Comment 16: A number of comments requested clarification as to how examiners will consider documents and concise descriptions of relevance submitted in third-party submissions pursuant to the guidance set forth in the MPEP at §§ 609.05(b), 904.03, 2256, and 2656.

Response: Examiners will consider documents and concise descriptions of relevance submitted in compliant third-party submissions in the same manner that examiners consider information and concise explanations of relevance submitted as part of IDSs in patent applications. Generally with the next Office action following the entry of third-party submission, a copy of the third party's listing of documents, with an indication of which documents were considered by the examiner, will be provided to the applicant. The indication that a document has been considered by the examiner will mean that the examiner has considered both the listed document and its accompanying concise description. The examiner will apply the information in a compliant third-party submission as the examiner deems necessary, but will not be expected to comment on each submitted document and concise description of relevance.

Parties should keep in mind that examiner consideration of a document and its accompanying concise description of relevance does not mean that the examiner agrees with the third party's position regarding the document, only that the examiner considered the publication and its accompanying description. For example, a third party might assert that a particular document is prior art but the examiner might determine that the assertion is incorrect in view of the application's earliest effective filing date. In such a situation, the examiner will still consider the document and the concise description of relevance even though the examiner determined that the document is not prior art.

2. Distinguish Third-Party Submitted Documents

Comment 17: Several comments suggested the Office print considered third-party submitted documents on the patent with a font or symbol that distinguishes them from applicant-submitted documents and examiner-cited documents. One comment also suggested the Office similarly distinguish references entered into the image file wrapper (IFW) of an application.

Response: The Office is updating its existing information technology (IT) systems to permit considered third-party submission documents to be distinguished on an issued patent from documents cited by the applicant and by the examiner, and also to distinguish third-party submission papers from other papers in the IFW of an application. The Office intends to have these updates completed prior to or shortly after the effective date of this final rule.

D. Concise Description of Relevance

Comment 18: One comment suggested that the Office indicate that the standard set forth in proposed § 1.290(a) for documents to be of "potential relevance to the examination of the application" is intended to be a low threshold so that third parties are encouraged to submit potentially relevant documents.

Response: The standard under § 1.290(a) for the documents submitted to be of "potential relevance to the examination of the application" is specified by 35 U.S.C. 122(e)(1). This standard requires the submitter to believe the documents being submitted are relevant to the extent that the submitter can provide the statutorily required concise description of the asserted relevance of each document submitted. *See* 35 U.S.C. 122(e)(2)(A).

Comment 19: Some comments requested the Office clarify the threshold for non-compliance for concise descriptions of relevance. One comment suggested the Office make the concise description requirement a low threshold that can be easily satisfied so that third parties are encouraged to participate. A number of comments requested more guidance and examples on concise descriptions. Several comments requested further guidance regarding what would be considered non-compliant (*e.g.,* bare statements) and what would be considered "concise." One comment further recommended the Office publish samples of third-party submission filing documents and Office communications concerning third-party submissions.

Response: The Office is interpreting the requirement for a concise description of relevance liberally because the Office anticipates third parties will be motivated to provide complete concise descriptions of relevance to draw the examiner's attention to the potential relevance of a submitted document to the examination of an application. At a minimum, a concise description of relevance must be more than a bare statement that the document is relevant. For example, the statements ''Document 1 is relevant,'' ''See Document 1,'' and ''Document 1 discloses/may disclose the invention'' would not be considered anything more than bare statements of relevance that do not rise to the level of meaningful concise descriptions. Additionally, merely highlighting or otherwise annotating the copy of the submitted document itself will not be deemed a proper concise description of relevance. Further, concise descriptions of relevance that appear to be mere form paragraphs/letters in opposition to a general class of invention or technology will not be deemed proper concise descriptions of relevance.

The statutory requirement for a concise description of relevance should not be interpreted as permitting a third party to participate in the prosecution of an application. 35 U.S.C. 122(c) prohibits the initiation of a protest or other form of pre-issuance opposition for published applications without the consent of the applicant. Therefore, while a concise description of relevance may include claim charts (*i.e.,* mapping various portions of a submitted document to different claim elements), the concise description of relevance is not an invitation to a third party to propose rejections of the claims, or set forth arguments relating to an Office action in the application or to an applicant's reply to an Office action in the application. Further, while third parties should refrain from submitting verbose descriptions of relevance, not only because the statute calls for a ''concise'' description but also because a focused description is more effective in drawing the examiner's attention to the relevant issues, the Office has not established an upper limit on the size of a concise description at this time.

Any sample third-party submission filing documents that the Office provides may not be appropriate in all situations; however, the Office intends to provide additional guidance on filing third-party submissions on its Web site, *www.uspto.gov.*

Comment 20: One comment suggested a third party need only explain ''how'' a document is of potential relevance, and suggested that it is unnecessary to explain both ''how and why'' a document is relevant, as discussed in the proposed rule package. *See Changes to Implement the Preissuance Submission by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 452 (stating that ''[t]he concise description should explain why the document has been submitted and how it is of potential relevance to the examination of the application * * *.'').

Response: The Office did not intend to suggest that two separate statements are required in order to comply with § 1.290(d)(2) as the statute only requires one statement of the asserted relevance of each submitted document. Accordingly, the third party need only provide for each document submitted one concise description setting forth the asserted relevance of the document.

Comment 21: One comment recommended the Office amend the rules to explicitly exclude declarations, such as expert declarations, as concise descriptions of relevance because applicants would not be able to readily contest such testimonial evidence during prosecution.

Response: 35 U.S.C. 122(e) provides for the submission of evidence in the form of patents, published patent applications, and other printed publications. A concise description of relevance for a submitted document is not considered evidence but, rather, a statement of facts regarding the submitted evidence. Accordingly, the Office will not consider a declaration as evidence, where such declaration is submitted as a concise description of relevance for a document. Third parties relying on declarations as concise descriptions of relevance should ensure the concise description of relevance does not amount to an attempt at third-party participation in the examination of the application.

E. Third Party

1. Anonymity

Comment 22: One comment expressed concern that preserving the anonymity of the third party could negatively impact small entities where large competitors seek out third parties to file excessive third-party submissions against small start-up companies, which might not have the funds, or be able to acquire the funds from their financial backers, to address such submissions.

Response: Section 1.290(h) makes clear, and its related preamble further explains, that the Office believes there is no need for applicants in general to address third-party submissions. The examiner will review the submissions, and should an issue arise where information from the applicant is desired, the Office will frame the issue and request information from the applicant under § 1.105. Such requests are envisioned to be rare and limited in scope and therefore well within the ability of any applicant to reply, including small start-up companies.

Additionally, the Office believes that providing anonymity would encourage small entity third parties to submit prior art. Without such anonymity, there are situations where potential third-party small start-ups would be hesitant to make a third-party submission, such as where the third party would be concerned with damaging a valuable relationship with the larger applicant. Anonymity helps small start-ups in supplying prior art against applications submitted by large entities (not necessarily competitors) with whom they may have a relationship.

Comment 23: A number of comments suggested making explicit in the rules that the real party in interest need not be identified and that the submitter may also remain anonymous where the submitter is not the real party in interest. Several comments asserted that the identity of the party making the submission for the real party in interest should also be protected because the identity of the submitter (*e.g.,* a particular attorney or law firm) could, in some instances, implicitly give away the identity of the real party in interest and that such protection would likely encourage more third-party submissions. Some comments have suggested ways for the Office to protect the identity of a party making a third-party submission for a real party in interest.

Response: The absence of an identification requirement in § 1.290 makes clear that there is no requirement to identify a real party in interest. The absence of such requirement is reinforced by the explanation of such in the preamble.

The Office cannot permit a third-party submission to be presented unsigned by the submitter in view of the signature requirement in § 1.4 for papers filed in a patent application, which require a person's signature. Third-party submissions are required to be signed because §§ 1.290(d)(5) and (g) require statements by the party making the submission. Therefore, to permit anonymity of the submitter, the Office would need a special procedure to hide the submitter's identity, which would impose an unjustifiable burden in view of the ease with which the real party in interest can be shielded notwithstanding identification of a submitter.

Comment 24: To the extent the Office collects identifying information regarding the submitter, some comments have suggested ways of collecting the information and means of keeping such identifying information confidential and preventing its entry into the IFW.

Response: The Office, at this time, does not intend to collect identifying information from submitters who utilize § 1.290. In view of the signature requirement in § 1.4 for all papers filed in a patent application, which require a person's signature, only the name of the submitter will be identified upon entry of a compliant third-party submission into the IFW of an application.

2. Registered Practitioners

Comment 25: Some comments suggested that only registered patent practitioners should be able to file third-party submissions. One comment suggested that registered practitioners are presumed qualified to have sufficient knowledge of patent law necessary to make the concise descriptions of relevance, and distinguished *ex parte* reexamination which may be filed by ''[a]ny person at any time.'' Another comment stated that the independent inventor community is concerned that potential harassment could result if any third party can file a third-party submission under proposed § 1.290.

Response: New 35 U.S.C. 122(e)(1) provides for ''[a]ny third party'' to file a preissuance submission. Any member of the public, including private persons, corporate entities, and government agencies, may file a third-party submission under § 1.290. An attorney or other representative on behalf of an unnamed real party in interest likewise may file a third-party submission since § 1.290 does not require that the real party in interest be identified. To limit the filing of third-party submissions to registered practitioners would be contrary to the express language of the statute and potentially exclude parties that may not have the resources to hire registered practitioners to file third-party submissions for them. Further, the Office's experience with pilot programs, such as the Peer Review Pilot 2011, has demonstrated the capabilities of non-practitioners to make appropriate submissions to the Office. To describe the relevance of a submitted document to an application, submitters need not be as well-versed in the patent laws as they should be in the field or technology described in the application and the document being submitted.

Regardless of who files a third-party submission, the Office will screen the third-party submission for compliance before entering it into the record so as to limit the potential for patent applicants to be harassed by third parties filing non-compliant third-party submissions. Moreover, third-party submitters are subject to § 11.18(b)(2), which provides that a party presenting a paper to the Office, whether a practitioner or non-practitioner, is certifying that ''to the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, [t]he paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office.'' Accordingly, Office rules already prohibit third parties from purposely filing a third-party submission to harass the applicant.

3. Compliance

Comment 26: One comment asserted that given the requirements of 35 U.S.C. 122(e)(2)(C) for making a statement affirming that a submission was made in compliance with the statute, and the requirements of § 11.18(b), for presenting a paper to the Office after making reasonable inquiry that the paper is not being presented for any improper purpose, the Office should provide explicit guidance regarding what is a ''reasonable inquiry'' so far as ascertaining whether a first rejection or notice of allowance has been issued and how a third party would be able to demonstrate such reasonable inquiry.

Response: What is reasonable will vary on a case-by-case basis. However, at a minimum, third parties wishing to determine whether an Office action rejecting any claim or a notice of allowance has been issued in a published application should avail themselves of the Office's public Patent Application Information Retrieval (PAIR) system to obtain the application's status prior to making a third-party submission.

F. Proposed Fees

1. Proposed Fee Schedule

Comment 27: A number of comments suggested that proposed § 1.290(f) be amended to charge a fee on a per-document basis as opposed to in increments of ten documents.

Response: Because the Office expects the processing costs to the Office for third-party submissions under § 1.290 to be equivalent to the processing costs to the Office for submissions under prior § 1.99, the Office has determined that the fee set forth in § 1.17(p) for submissions under prior § 1.99 is also applicable to third-party submissions under § 1.290. Thus, § 1.290(f) provides that any third-party submission filed under § 1.290 must be accompanied by the fee set forth in § 1.17(p) for every ten documents or fraction thereof being submitted.

2. Fee Exemption

Comment 28: Several comments suggested the fee exemption provided for in proposed § 1.290(g) could encourage abuse, which will result in the Office being overburdened by documents for consideration by an examiner. These comments also favored the $180 fee and suggested that the $180 fee set forth in proposed § 1.290(f) would not discourage a third party from filing documents that will enhance the quality of the application's examination. Another comment proposed an alternate fee schedule intended to balance the needs of the Office and third parties.

Response: Because the fee exemption provided under § 1.290(g) only applies to a third party's first submission of three or fewer documents in an application, the Office does not anticipate it will become overburdened by submissions in any one application. While the $180 fee set forth under § 1.290(f) may not be burdensome to some third parties, the Office believes it may discourage or prevent some third parties from making a third-party submission if even the first document submitted incurred the $180 fee. The Office believes the fee structure implemented in this final rule strikes a balance between encouraging submissions so that examiners have the best documents before them when examining applications and, at the same time, discouraging third parties from making excessive submissions.

Comment 29: A number of comments suggested the Office not rely on the concept of ''privity'' to administer the fee exemption. One comment suggested it will be difficult for third parties with limited legal experience and large entities, such as corporations and universities, to determine if privity exists. This comment also suggested that a ''privity test'' in the fee exemption is not necessary to avoid abuse because the Office's experience with the Peer-to-Patent pilot program shows that third parties did not flood applications with documents even though the submissions were free and could be made anonymously. This comment further asserted that the required statement regarding privity is likely to ''chill collaboration'' among third-party submitters which might be necessary for third parties to avoid making cumulative submissions.

Response: The Office believes that the concept of ''privity'' is well established since it is already employed in other contexts before the Office, such as *inter partes* reexamination. *See, e.g.,* § 1.907 (providing that ''[o]nce an order to reexamine has been issued under § 1.931, neither the third party requester, nor its privies, may file a subsequent request for *inter partes* reexamination of the patent until an *inter partes* reexamination certificate is issued under § 1.997, unless authorized by the Director.''). Additionally, third parties who are concerned about not being able to make the ''privity'' statement under § 1.290(g) to take advantage of the fee exemption when making a submission in an application are not precluded from making the submission because such parties have the option of simply paying the required fee under § 1.290(f) instead of evaluating whether it is appropriate to make the ''privity'' statement pursuant to § 1.290(g).

Comment 30: One comment questioned whether a third party who made a first third-party submission that included the statement set forth in proposed § 1.290(g) would need to make a similar statement in each subsequent submission (*e.g.,* that it was previously unaware of the documents at the time of the first submission).

Response: Where a third party takes advantage of the fee exemption pursuant to § 1.290(g) in a first submission, the third party is not required to make any statement in each subsequent submission indicating that the third party was previously unaware of the need to file the subsequent submission at the time the third party made the first submission.

Comment 31: Several comments suggested that the number of fee-exempt documents under proposed § 1.290(g) should be changed. Some comments suggested that the number be reduced, while others suggested it be increased.

Response: The Office is providing a fee exemption for the first third-party submission in an application by that third party containing three or fewer total documents because the submission of three or fewer documents is more likely to assist the examiner in the examination process than no third-party submissions. Moreover, keeping the size of the fee exempted submission to three or fewer total documents will help to focus the attention of third parties on finding and submitting only the most relevant art to the claims at hand. Submission of voluminous documents costs the Office more in processing the submission and that cost outweighs the benefit to the examiner in having access to third-party submissions. Thus, the provision of § 1.290(g) strikes a balance between encouraging third parties to make focused third-party submissions of perhaps highly relevant documents to the examination of an application and discouraging third parties from making unnecessarily voluminous submissions.

G. Time Periods for Submission

1. Statutory Time Periods

Comment 32: One comment questioned whether the filing of a request for continued examination (RCE) resets the time period for filing a third-party submission under proposed § 1.290(b)(2)(ii).

Response: The filing of an RCE does not reset the time period for filing a third-party submission under § 1.290(b)(2)(ii). However, the filing of an RCE does not preclude a third-party submission from being filed after the RCE, if the filing of the third-party submission would otherwise be within the time periods set forth in § 1.290(b)(2).

Comment 33: One comment asserted that the only deadline for making a third-party submission should be the issuance date of a notice of allowance because, among other reasons, third parties may not immediately be aware of their competitors' patent applications.

Response: The time period for making a third-party submission is set by statute in 35 U.S.C. 122(e) and cannot be modified by the Office, as the Office regulations must conform to the requirements of the statute.

Comment 34: A number of comments recommended amending proposed §§ 1.290(b) and 1.291(b)(1) to state that the third-party submission/protest must be filed ''prior to'' the specified date or event instead of ''before'' because the meaning of the term ''before'' can vary depending on the context.

Response: Sections 1.290(b) and 1.291(b)(1) have been modified relative to the proposed rule to require that any third-party submission/protest must be filed ''prior to'' the specified date or event.

Comment 35: One comment requested clarification regarding whether a third-party submission could be timely submitted after prosecution is reopened in an application subsequent to a notice of allowance where the publication of the application or the mailing of a first rejection of any claim has not occurred.

Response: The time period for making a third-party submission is set by statute in new 35 U.S.C. 122(e), which states that a third-party submission must be made before ''a notice of allowance * * * is given or mailed in the application.'' Thus, the statute does not permit a third-party submission to be filed after a notice of allowance has been given or mailed in an application, regardless of whether that notice of allowance is subsequently withdrawn.

2. ''First Published''

Comment 36: One comment suggested that the republication of an application under § 1.221(b) should not be considered the first publication under 35 U.S.C. 122(b) for purposes of proposed § 1.290(b) as third parties will be given a windfall of time to file documents. This comment also suggested that this additional time could result in submissions not receiving timely consideration before a first Office action is mailed.

Response: The republication of an application under § 1.221(b) is not the first publication by the Office under 35 U.S.C. 122(b) for purposes of 35 U.S.C. 122(e). Accordingly, the first publication of the application will trigger the § 1.221(b)(2)(i) time period where appropriate.

Comment 37: One comment suggested that publication of an application by the World Intellectual Property Organization (WIPO) should be considered a publication of the application for purposes of proposed § 1.290(b).

Response: The third-party submission timing requirement based on the publication of the application is set forth in new 35 U.S.C. 122(e)(1)(B), which is expressly limited to the publication of the application for patent ''by the Office.'' This statutory provision does not account for the publication of the application by organizations other than the Office, such as WIPO. The timing requirement of § 1.290(b)(2)(i) conforms to that of the statute and, likewise, is not triggered by the publication of the application by WIPO.

Comment 38: One comment questioned how a third party could make a third-party submission before a date of first rejection that is earlier than the date the application publishes, where the existence of the application, and its contents, is only available to that third party after the publication date.

Response: A third-party submission could be made before a first rejection that is earlier than the date the application publishes where a third party otherwise knows of the application. The time periods for submission are set forth in new 35 U.S.C. 122(e) and cannot be modified by the Office. The AIA included provisions for prioritization of examination, as well as for preissuance submissions by third parties, and the details of any individual provision, such as for preissuance submissions, can be understood to represent a balance among the benefits of the individual provisions of the Act.

Comment 39: Several comments requested that the Office consider amending the provisions of 35 U.S.C. 122(b)(2)(B)(i), which permit applicants to make non-publication requests in their applications, to ensure that all applications publish without condition so examiners will have the benefit of third-party submissions during examination.

Response: The statutory provisions of 35 U.S.C. 122(b)(2)(B)(i) are not subject to amendment by the Office. Where the Office does not publish an application, the date that is six months after the publication date would not occur and, therefore, by default would be considered later than both the date of a first rejection of any claim and the date the notice of allowance is given or mailed in the application. Accordingly, the date that a notice of allowance is given or mailed in the application would control the timing of a third-party submission in an application which has not been published, not the date of the first rejection of any claim.

3. Certificate of Mailing/Transmission

Comment 40: Several comments suggested amending § 1.8 to include the exception listed in proposed § 1.290(i). One comment suggested the Office permit use of the certificate of mailing or transmission under § 1.8. The comment further suggested that the problem of papers crossing in the mail can also occur with use of ''Express Mail'' service under § 1.10.

Response: Section 1.8(a)(2)(i) has been amended to include the exception listed in § 1.290(i). Not according a third-party submission filed by first class mail the benefit of its date of deposit with the USPS pursuant to a § 1.8 certificate of mailing reduces the potential for papers crossing in the mail. This requirement reduces the risk that a third-party submission, if it was permitted to rely on a certificate of mailing to be timely, would not be identified and entered until after an Office action is mailed, and encourages third parties to file a third-party submission at their earliest opportunity. It is desirable for papers filed under § 1.290 to be included in the record of the patent application, and considered by the Office, at the earliest possible point in prosecution.

Additionally, the use of a certificate of transmission pursuant to § 1.8 is not applicable to third-party submissions under § 1.290 because facsimile transmission of third-party submissions is not permitted. Facsimile transmissions, although not subject to delay, are often received in poor quality. Errors in optical character recognition, or lack of clarity of symbols or figures, present potential issues with providing a ''legible copy'' as required by § 1.290(d)(3), and could cause a submission to be found non-compliant. Further, because a submission under § 1.290 is made by a third party, the Office will not have an opportunity to contact the third party for clarification of any illegible content.

The use of United States Postal Service (USPS) Express Mail service pursuant to § 1.10 carries with it the risk of little, if any, delay. This risk is minimal as compared to the possible delay that could be experienced with first class mail for which a certificate of mailing is used. The fastest and most legible means for transmitting a third-party submission is electronically via the dedicated Web-based interface the Office has developed for these submissions. As a practical matter, any third-party submission should be submitted as soon as possible after the third party becomes aware of the existence of the application to which the submission is to be directed. By submitting a third-party submission early in the examination process, *i.e.,* before the Office acts on the application if possible, the third party ensures that the submission will be of the most benefit to the Office in its examination of the application and increases the likelihood that the submission will meet the statutory timing requirements.

H. Entry of Third-Party Submissions

1. Notification to Applicant of Entry

Comment 41: A number of comments recommended the Office directly notify applicants of third-party submissions directed to their applications, either when the third-party submissions are filed or when compliant third-party submissions are entered into the applications.

Response: The Office plans to electronically message applicants upon entry of compliant third-party submissions directed to their applications. In order to receive notification, however, applicants must participate in the e-Office Action program, as such notification will only be provided via electronic mail message (email) to program participants.

2. Service on Applicant

Comment 42: As an alternative to the Office directly notifying applicants, several comments recommended requiring third parties to serve third-party submissions on applicants. These comments suggested that service would alleviate the burden on applicants to monitor their application files for third-party submissions.

Response: Service on applicants will not be necessary in view of the opportunity for applicants to receive electronic notification of the entry of a third-party submission from the Office by participating in the e-Office action program. Further, not requiring service of third-party submissions should reduce the possibility that applicants will gain knowledge of non-compliant third-party submissions and, as a result, deem it necessary to independently file the submitted documents with the Office in an IDS. Additionally, the Office is seeking to prevent challenges regarding whether service of a third-party submission was proper from negatively impacting the pendency of the application.

3. Notification to Third Party of Non-Compliance

Comment 43: A number of comments urged the Office to notify third parties of non-compliant third-party submissions to provide those parties an opportunity to make a resubmission if the statutory time period has not yet expired. Several comments suggested that such notice include the reason(s) for non-compliance. Other comments suggested the notice of non-compliance provide procedures for curing the defect(s) and not be made of record in the application. One comment suggested that such notice be provided where the third party includes a correspondence address with the submission, while another comment suggested the Office also notify third parties when third-party submissions are accepted.

Response: As a courtesy, the Office intends to notify third parties of non-compliant third-party submissions via electronic mail message (email) where the third-party submitter includes an email address in the third-party submission, whether the submission is filed electronically or in paper. An issued notice of non-compliance will indicate why the third-party submission was found to be non-compliant. Neither the notification nor the non-compliant third-party submission will be made of record in the application. Further, if the submission is deemed compliant, the Office does not intend to enter the email address provided for notification of non-compliance into the record of the patent application.

The Office will not notify the third-party submitter of entry of a compliant third-party submission into the record. However, for an electronic filing, the third party will receive immediate, electronic acknowledgment of the Office's receipt of the submission. For a paper filing, the third party may include a self-addressed postcard with the third-party submission to receive an acknowledgment by the Office that a third-party submission has been received. In either case, the electronic acknowledgment or return receipt postcard is not an indication that the third-party submission is compliant or has been entered. In a published application, third parties may access public PAIR to confirm that their submission has been entered.

Where a third-party submission is filed in an unpublished application, a returned postcard acknowledging receipt will not indicate whether such application in fact exists or the status of any such application because original applications are required by 35 U.S.C. 122 to be kept in confidence unless published pursuant to 35 U.S.C. 122(b) or available to the public pursuant to § 1.14(a)(1)(iv), (v), or (vi). Thus, unless a third party has been granted access to an original application, the third party is not entitled to obtain from the Office any information concerning the same, including the mere fact that such an application exists.

4. Non-Compliant Submissions

Comment 44: Some comments raised the issue of applicant's duty to disclose any documents cited in a third-party submission that make it through an initial review but are not considered by the examiner for failure to comply with some formality. One of these comments urged the Office to conduct a thorough initial review to ensure submitted documents can be considered by examiners. Several comments suggested the Office consider alternative ways of processing partially compliant third-party submissions, such as by redacting the non-compliant parts of the submission so that the other documents and their concise descriptions may be entered and considered by the examiner, or by preparing a clean or redacted list of only the documents that were considered, and discarding any paper that references any documents that were not considered by the examiner.

Response: The Office has established procedures to screen third-party submissions for compliance with the requirements of 35 U.S.C. 122(e) and § 1.290 before entering the submissions into the IFW of an application for consideration. Non-compliant and partially compliant submissions will not be entered into the record, as the Office's intent is that only compliant third-party submissions will be entered for consideration by examiners. The Office does not intend to redact or correct non-compliant portions of a third-party submission as the third-party submitter is in the best position to make any necessary revisions to its submission and make a resubmission if the statutory time period has not yet expired.

Comment 45: A number of comments questioned whether minor defects in a third-party submission would result in the entire submission not being entered, and requested guidance regarding what types of informalities, if any, in a third-party submission would not cause the Office to deem the entire submission non-compliant.

Response: Section 1.290(a) provides that a third-party submission may not be entered or considered by the Office if any part of the submission is not in compliance with 35 U.S.C. 122(e) and § 1.290. The Office will enter a third-party submission that is compliant with both 35 U.S.C. 122(e) and § 1.290; however, any non-compliance in a third-party submission with respect to the requirements of 35 U.S.C. 122(e), whether or not the third-party submission is otherwise compliant with § 1.290, will prevent entry of the entire third-party submission into the record. A third-party submission that is compliant with 35 U.S.C. 122(e) but non-compliant with some requirement of § 1.290 may be entered if the error is of such a minor character that, in the opinion of the Office, it does not raise an ambiguity as to the content of the submission. In any event, the Office will either enter or not enter the entire submission and will not attempt to enter portions of partially compliant submissions.

Ideally, only compliant third-party submissions will come before an examiner for consideration. Nonetheless, the Office, in certain circumstances, may be able to exercise some latitude in its screening of third-party submissions for non-compliance with the requirements of § 1.290 so that errors of only a minor character that, in the opinion of the Office, do not raise an ambiguity as to the content of the submission do not prevent entry of the entire submission. For example, if an error with respect to a requirement of § 1.290 is of such a nature that the content of the third-party submission can still be readily ascertained (*e.g.,* a U.S. patent is identified by the correct patent number and issue date but the name of the first named inventor is clearly misspelled), the Office may have enough information to be able to enter the third-party submission into the record despite the error. However, the determination of whether to enter or not to enter a partially compliant submission with respect to a requirement of § 1.290 will be on a case-by-case basis and at the sole discretion of the Office (*e.g.,* the Office may decline to enter a third-party submission listing a U.S. patent whose patent number does not match Office records with respect to that patent number's issue date and/or first named inventor). The Office's dedicated Web-based interface for filing third-party submissions electronically permits third parties to verify the accuracy of some of the information in the submission prior to its filing. Thus, third parties are strongly encouraged to avail themselves of this feature to better ensure compliance with 35 U.S.C. 122(e) and § 1.290.

Comment 46: Several comments suggested the Office waive any informality in a third-party submission, or give the submitter an opportunity, such as a non-extendable one-month period, to either explain why the submission was not defective or to correct the submission. One comment stated that the Office has authority to consider the statutory period to be tolled by an initial non-compliant submission, as it does under the provisions of § 1.135(c).

Response: Where a third-party submitter is notified of a non-compliant third-party submission, the party will have an opportunity to make a resubmission if the statutory time period for making a third-party submission has not yet expired. The Office will not provide the third-party submitter a non-extendable time period in which to make a correction as such a practice would delay the prosecution of the application and could potentially be used by third parties as a mechanism for delaying prosecution. Similarly, the filing of a non-compliant third-party submission will not toll the statutory time period for making submissions. The Office cannot toll the statutory time period for third-party submissions that fail to comply with statutory requirements. Further, the Office will not toll the time period for making a third-party submission where a submission complies with the statute but does not comply with a requirement of § 1.290 because the Office does not want to introduce a delay in the prosecution of an application to wait for a third party who may, or may not, make the necessary correction. Accordingly, third parties are advised not to delay in making third-party submissions to increase the likelihood of having sufficient time to make a resubmission should the original submission be found non-compliant. The Office intends to notify third parties of non-compliant submissions as soon as reasonably practicable.

Comment 47: Several comments favored eliminating the Office's proposed ''gatekeeper function'' (*i.e.,* screening third-party submissions for compliance) and instead relying upon ''self-policing'' pursuant to the statement of compliance under proposed § 1.290(d)(5)(ii), as being subject to § 11.18(b), to discourage unauthorized filings. These comments also asserted that overly strict screening may prevent an examiner from considering relevant documents, and that screening will not fully protect applicants from obtaining knowledge of non-compliant submissions. Instead of a costly review process, one comment suggested limiting the number of third-party submissions that a single party (or parties in privity with the third party) may submit to promote prompt entry of third-party submissions while preventing individual third parties from making excessive submissions.

Response: By screening third-party submissions for compliance before entry into the record of an application, the Office is affording some protection to applicants against entry of non-compliant submissions that might trigger a duty of disclosure on the part of the applicant to independently file such information in an IDS. Such screening is merely an extension of the screening the Office already performs for submissions under § 1.291 (and previously performed for submissions under § 1.99). Further, such screening should encourage third parties to file better quality third-party submissions, with fewer errors, than under the proposed ''self-policing'' approach.

5. Submissions in Abandoned Applications

Comment 48: One comment suggested the Office should give more consideration to requests to revive applications that were abandoned during the time period when third parties could make third-party submissions because some applicants might abandon their applications to discourage third-party submissions.

Response: The statute does not preclude third parties from making submissions in abandoned applications. Third parties having documents relevant to an abandoned application, therefore, should cite these documents to the Office via a compliant third-party submission since the application eventually may be revived and the submission considered.

Comment 49: One comment suggested the Office not permit entry of third-party submissions into the record of abandoned applications because it wastes Office resources to screen such submissions for compliance and places too much burden on applicants to monitor abandoned application records if the Office does not notify them when compliant submissions are entered. Another comment suggested the Office only enter third-party submissions into the record of abandoned applications under certain circumstances, such as when the Office's Patent Application Information Retrieval (PAIR) system indicates that a continuing application or a petition to revive has been filed, thereby shifting the burden to third parties to monitor the application in that regard.

Response: 35 U.S.C. 122(e) permits preissuance submissions to be filed in an application, whether the application is pending or abandoned. Because the Office intends to notify applicants participating in the e-Office action program of the entry of compliant third-party submissions into an application, whether pending or abandoned, these applicants should not need to monitor their abandoned application files for entry of such submissions.

Comment 50: One comment requested clarification regarding examiner consideration of third-party submissions made in abandoned applications. While the notice of proposed rulemaking states that an examiner would not consider such submission until the abandoned application resumes a pending status, the comment questioned whether, in reviewing an abandoned parent application for pertinent prior art with respect to a pending child application pursuant to MPEP § 707.05, an examiner would be required to consider any third-party submission that was entered into the parent application after it was abandoned.

Response: In reviewing an abandoned parent application for pertinent prior art with respect to a pending child application pursuant to MPEP § 707.05, an examiner should consider any third-party submission that was entered into the parent application after it was abandoned.

I. Duty on Applicant

1. Duty of Disclosure

Comment 51: Several comments suggested deleting any references in proposed § 1.290(h) to an applicant's duty under § 1.56 because such references could be interpreted as waiving the duty of disclosure or, alternatively, revising proposed § 1.290(h) to make it clear that applicants are not relieved of their duty under § 1.56. Several of these comments gave examples of where non-compliant third-party submissions may trigger an applicant's duty under § 1.56. Another comment suggested the rule explicitly provide that a third-party submission imposes no duty on an applicant (*e.g.,* to correct or otherwise review its contents). Further, to the extent proposed § 1.290(h) implies that applicants may be required to reply to a third-party submission under some circumstances, several comments suggested amending proposed § 1.290(h) to reflect that applicants are not required to reply to a third-party submission.

Response: Section 1.290(h), as proposed, states that in the absence of any request by the Office, an applicant has no duty to, and need not, reply to a third-party submission under § 1.290 by a third party. The Office's intent in utilizing the term ''duty'' in proposed § 1.290(h) was not to incorporate a statement relative to the duty of disclosure under § 1.56. Rather, the Office's use of the term ''duty'' was in keeping with the general concept that applicants need not comment on third-party submissions based solely on the presence of such submissions. This concept was articulated in the rule by providing that there is no general requirement that applicants reply to third-party submissions. In view of the controversy generated by the use of the term ''duty'' in the proposed rule, the section has been revised in this final rule to delete its use.

Comment 52: One comment suggested amending the statement under proposed § 1.290(d)(5)(i) to include individuals who are in privity with an individual who has a duty to disclose information with respect to the application under § 1.56. Another comment recommended providing instructions to the general public regarding the statement under proposed § 1.290(d)(5)(i) because non-practitioners may be unfamiliar with the duty of disclosure.

Response: Section 1.290(d)(5)(i) requires a statement by the third-party submitter that the submitter is not a § 1.56(c) party with a duty to disclose information with respect to the application for which the third-party submission is intended. The requirement is present to exclude applicants and other § 1.56(c) parties from filing information in the application via § 1.290 rather than using the required means of an information disclosure statement under §§ 1.97 and 1.98. The Office declines the invitation to extend the prohibition beyond those parties who already have a duty to disclose material information to the Office under § 1.56.

Guidance regarding who has a duty to disclose, *i.e.,* a § 1.56(c) party, can be found in MPEP § 2001.01, and the use of the rule section is itself self-defining.

J. Information Technology (IT) Issues

1. Electronic Filing

Comment 53: One comment suggested requiring that all third-party submissions be filed electronically.

Response: While it would be most efficient for third parties to file third-party submissions electronically, the Office is not requiring all third-party submissions be filed electronically, as doing so would be contrary to Article 8 of the Patent Law Treaty (PLT), which requires an Office to accept a filing in paper for purposes of complying with a time limit.

Comment 54: One comment suggested the Office separate the listing of documents from the copies of submitted documents so that identifying bibliographical information in the listing of documents is visible in the IFW even when the copies of submitted non-patent literature (NPL) documents are not visible in the IFW.

Response: The Office will separate the § 1.290(d)(1) document list from the copies of the documents in the IFW when entering compliant third-party submissions under § 1.290. The Office currently employs such a practice when entering IDS submissions under § 1.98.

2. Protect Applicants From Unauthorized Submissions

Comment 55: Several comments urged the Office to exercise precautions to protect applications from unauthorized third-party submissions in applications. Another comment asserted that third parties should be encouraged to use EFS-Web to make third-party submissions, but the Office should alter the EFS software to prevent third-party submissions from being directly entered into the IFW without first being reviewed for compliance.

Response: The Office has developed a dedicated Web-based interface for third parties to submit third-party submissions electronically. This dedicated electronic interface is available as an option in EFS-Web and is designed so that third-party submissions under § 1.290 are first screened for compliance with the statute and the rule before being entered into an application file. While this interface will identify submissions for screening before the submissions are sent to the examiner, the Office cannot guarantee that such a system will entirely prevent parties from making unauthorized submissions. Further, while the Office could limit third-party submissions to paper and perform manual screening of each incoming paper to determine whether it is a proper paper, such a system would require intensive resources, and lack the efficiencies and benefits of electronic filing using the Office's dedicated interface. Additionally, limiting submissions to paper only would not entirely eliminate the risk of an unauthorized submission being entered into an application due to inadvertent human error in a manual screening process.

3. Reduce Untimely Third-Party Submissions

Comment 56: A number of comments suggested IT enhancements to prevent or drastically reduce the possibility of untimely third-party submissions. Several of these comments suggested the Office include a feature in EFS-Web or the Office's Patent Application Information Retrieval (PAIR) system that automatically notifies third parties when an application is no longer eligible to receive third-party submissions. One comment suggested providing notice to the examiner when a third-party submission is made in the time period between the posting of an Office action to be mailed and the actual mailing date of the Office action.

Response: As a feature of its dedicated Web-based interface for electronically filing preissuance submissions, the Office plans to automatically prevent a third party from making a third-party submission in an application after the time periods for submission have expired for that application. With respect to providing notice to examiners, examiners will be notified upon entry of a compliant third-party submission in an application that they are examining. On the rare occasion of a third-party submission being filed after preparation of an Office action but before the mailing of the Office action, notification of the entry of a compliant third-party submission in the application will not necessarily delay the mailing of the Office action. Such submissions will be handled the same way IDS submissions are handled under similar circumstances.

4. Other Proposed System Enhancements

Comment 57: One comment suggested making available in the Office's Patent Application Information Retrieval (PAIR) system a ''first action prediction'' estimate of when the first Office action is expected to be issued, and that such estimate might be provided only after the six-month window from publication has elapsed.

Response: The Office already provides a tool that permits third parties and applicants to check current estimates on how long it will take for a first Office action to issue in a patent application according to the Group Art Unit in which the application has been docketed or by class and subclass associated with the application. This ''First Office Action Estimator'' tool is available on the Office's Web site at *http://www.uspto.gov/patents/stats/first_office_action_estimator.jsp.* Accordingly, the Office does not plan to implement an additional feature in PAIR at this time to specifically address third-party submissions under § 1.290. Additionally, third parties are encouraged to file third-party submissions as early as possible rather than delay a submission based upon a predicted first Office action date. Any first Office action prediction for an application would merely operate as an estimate and would not be a binding date or otherwise provide assurance to a third party that a submission would be accepted if an Office action was mailed before the estimated date.

Comment 58: One comment suggested EFS-Web identify the earliest-claimed priority date of an application so an interested third party can identify whether a document is prior art.

Response: In general, the Office does not make a determination regarding earliest effective filing date until such determination is necessary to evaluate the patentability of the claims. Additionally, the determination of the earliest-claimed priority date of an application is a highly fact-specific inquiry that is not fully amenable to performance by an automated algorithm. Furthermore, it would not be desirable for third parties to delay submissions until the Office would provide such a date, which is subject to change if, for instance, applicant introduces new priority or benefit claims or amends the claims in such a manner as to affect whether the claims are supported by the disclosures of the claimed priority or benefit documents. Also, determination of the earliest-claimed priority date of an application would not be necessary where a third-party is submitting a document that is not prior art. For these reasons, the Office has no plans at this time to modify EFS-Web to identify the earliest-claimed priority or benefit date of an application for third-party submission purposes.

Comment 59: One comment suggested the Office provide an automated means for third parties to check whether a document has been made of record in an application, making it convenient for the third party to review any associated descriptions of relevance so the third party can avoid making a cumulative submission. The comment also suggested the Office automatically flag documents in the IFW that have been submitted more than once in an application and make the associated descriptions of relevance for these documents easily accessible to examiners.

Response: Since an interested third party can review a published application's file history using the Office's public Patent Application Information Retrieval (PAIR) system (*e.g.,* to view a document list previously submitted in a third-party submission by another third party), the Office does not deem an automated system that would identify whether a particular document was previously made of record in the application to be necessary at this time. Further, third parties may use the concise description of relevance to bring to the examiner's attention whether a particular document being submitted was previously made of record in the application.

L. Other Rules

1. 37 CFR 1.99

Comment 60: Some comments suggested the Office retain § 1.99 because some third parties might still want to make a submission without providing a concise description of relevance as required by proposed §§ 1.290(d)(2) and 1.291(c)(2). In this regard, one of these comments recommended the time for making a submission under § 1.99 be amended to be the same as that for proposed § 1.290.

Response: In implementing new 35 U.S.C. 122(e), Congress provided that preissuance submissions by third parties must set forth a concise description of relevance of each document submitted. Thus, to maintain § 1.99, which does not require concise descriptions of relevance, would be in conflict with the statute.

2. 37 CFR 1.291

Comment 61: One comment proposed removing § 1.291 along with §§ 1.99 and 1.292 on the basis that § 1.291 is unnecessary and contrary to Congressional intent. The comment asserted that § 1.291 is ultra vires because it permits submission of evidence concerning inequitable conduct that is not statutorily authorized under 35 U.S.C. 122(e), which refers solely to submission of printed publications. The comment further asserted that § 1.291 imposes obligations that conflict with those under § 1.290 because 35 U.S.C. 122(e) will require a concise description of relevance regardless of whether the application has been published, yet 35 U.S.C. 122(c) still does not allow post-publication protests without the applicant's consent.

Response: Protests pursuant to § 1.291 are supported by a separate statutory provision, 35 U.S.C. 122(c), which implies the availability of submitting a protest in an application prior to publication, absent the applicant's consent. Further, § 1.291 is not deemed duplicative or unnecessary because it permits the submission of information that is not permitted in a third-party submission under § 1.290. For example, in addition to printed publications, under § 1.291, a third party can submit information other than printed publications, as well as present arguments regarding the patentability of the claims of the application.

Rulemaking Considerations

A. *Administrative Procedure Act:* This final rule changes the rules of practice concerning the procedure for filing third-party submissions. The changes in this final rule concern the patent application process and do not change the substantive criteria of patentability. Therefore, the changes in this final rule are merely procedural and/or interpretive. *See Bachow Communs., Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law) and are not required pursuant to 5 U.S.C. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.") (quoting 5 U.S.C. 553(b)(A)). The Office, however, published proposed changes and a Regulatory Flexibility Act certification for comment as it sought the benefit of the public's views on the Office's proposed implementation of this provision of the AIA. The Office received no comments on the Regulatory Flexibility Act certification.

B. *Regulatory Flexibility Act:* For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this final rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). This final rule changes the rules of practice to implement section 8 of the AIA, which provides a mechanism for third parties to submit to the Office, for consideration and inclusion in the record of a patent application, any patents, published patent applications, or other printed publications of potential relevance to the examination of the application.

The changes in this final rule concern requirements for third parties submitting patents, published patent applications, or other printed publications in a patent application. The burden to all entities, including small entities, imposed by these rules is a minor addition to that of the current regulations for third-party submissions under § 1.99. Consistent with the current regulations, the Office will continue to require third parties filing submissions to, for example, file a listing of the documents submitted along with a copy of each document, with minor additional formatting requirements. Additional requirements in this final rule are requirements of statute (*e.g.,* the concise explanation) and thus the sole means of accomplishing the purpose of the statute. Because of the expanded scope of submissions under this rulemaking and additional requirements by statute, the Office believes this will take a total of 10 hours at a cost of $3710 per submission. Furthermore, the Office estimates that no more than 730 small entity third parties will make third-party submissions per year. Therefore, the changes in this final rule will not have a significant economic impact on a substantial number of small entities.

C. *Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. *Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. *Executive Order 13132 (Federalism):* This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. *Executive Order 13175 (Tribal Consultation):* This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. *Executive Order 13211 (Energy Effects):* This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. *Executive Order 12988 (Civil Justice Reform):* This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. *Executive Order 13045 (Protection of Children):* This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. *Executive Order 12630 (Taking of Private Property):* This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. *Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the United States Patent and Trademark Office will submit a report containing this final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this final rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this final rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

L. *Unfunded Mandates Reform Act of 1995:* The changes in this final rule do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. *National Environmental Policy Act:* This rulemaking will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. *National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. *Paperwork Reduction Act:* The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This final rule makes changes to the rules of practice that impact existing information collection requirements previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0651–0062. Accordingly, the Office submitted a proposed revision to the information collection requirements under 0651–0062 to OMB for its review and approval when the notice of proposed rulemaking was published. The Office also published the title, description, and respondent description of the information collection, with an estimate of the annual reporting burdens, in the notice of proposed rulemaking (*See Changes to Implement the Preissuance Submission by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 455–56). The Office did not receive any comments on the proposed revision to the information collection requirements under 0651–0062. The changes adopted in this final rule do not require any further change to the proposed revision to the information collection requirements under 0651–0062. Accordingly, the Office has resubmitted the proposed revision to the information collection requirements under 0651–0062 to OMB. The proposed revision to the information collection requirements under 0651–0062 is available at OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses, and Biologics.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, 37 CFR parts 1 and 41 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.6 is amended by revising paragraph (d)(3) to read as follows:

§ 1.6 Receipt of correspondence.

* * * * *

(d) * * *

(3) Correspondence which cannot receive the benefit of the certificate of mailing or transmission as specified in § 1.8(a)(2)(i)(A) through (D), (F), and (I), and § 1.8(a)(2)(iii)(A), except that a continued prosecution application under § 1.53(d) may be transmitted to the Office by facsimile;

* * * * *

■ 3. Section 1.8 is amended by revising paragraph (a)(2)(i)(C), and by adding new paragraphs (a)(2)(i)(B) and (a)(2)(i)(G) through (a)(2)(i)(J), to read as follows:

§ 1.8 Certificate of mailing or transmission.

(a) * * *

(2) * * *

(i) * * *

(B) Papers filed in trials before the Patent Trial and Appeal Board, which are governed by § 42.6(b) of this title;

(C) Papers filed in contested cases before the Patent Trial and Appeal Board, which are governed by § 41.106 (f) of this title;

* * * * *

(G) The filing of a written declaration of abandonment under § 1.138;

(H) The filing of a submission under § 1.217 for publication of a redacted copy of an application;

(I) The filing of a third-party submission under § 1.290; and

(J) The calculation of any period of adjustment, as specified in § 1.703(f).

* * * * *

■ 4. Section 1.17 is amended by removing and reserving paragraph (j) and revising paragraph (p) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(j) [Reserved]

* * * * *

(p) For an information disclosure statement under § 1.97(c) or (d) or for the document fee for a submission under § 1.290—$180.00

* * * * *

§ 1.99 [Removed and reserved]

■ 5. Section 1.99 is removed and reserved.

■ 6. An undesignated center heading before § 1.290 is added to read as follows:

PREISSUANCE SUBMISSIONS AND PROTESTS BY THIRD PARTIES

■ 7. Section 1.290 is added to read as follows:

§ 1.290 Submissions by third parties in applications.

(a) A third party may submit, for consideration and entry in the record of a patent application, any patents, published patent applications, or other printed publications of potential relevance to the examination of the application if the submission is made in accordance with 35 U.S.C. 122(e) and this section. A third-party submission may not be entered or considered by the Office if any part of the submission is not in compliance with 35 U.S.C. 122(e) and this section.

(b) Any third-party submission under this section must be filed prior to the earlier of:

(1) The date a notice of allowance under § 1.311 is given or mailed in the application; or

(2) The later of:

(i) Six months after the date on which the application is first published by the Office under 35 U.S.C. 122(b) and § 1.211, or

(ii) The date the first rejection under § 1.104 of any claim by the examiner is given or mailed during the examination of the application.

(c) Any third-party submission under this section must be made in writing.

(d) Any third-party submission under this section must include:

(1) A document list identifying the documents, or portions of documents, being submitted in accordance with paragraph (e) of this section;

(2) A concise description of the asserted relevance of each item identified in the document list;

(3) A legible copy of each item identified in the document list, other than U.S. patents and U.S. patent application publications;

(4) An English language translation of any non-English language item identified in the document list; and

(5) A statement by the party making the submission that:

(i) The party is not an individual who has a duty to disclose information with respect to the application under § 1.56; and

(ii) The submission complies with the requirements of 35 U.S.C. 122(e) and this section.

(e) The document list required by paragraph (d)(1) of this section must include a heading that identifies the list as a third-party submission under § 1.290, identify on each page of the list the application number of the application in which the submission is being filed, list U.S. patents and U.S. patent application publications in a separate section from other items, and identify each:

(1) U.S. patent by patent number, first named inventor, and issue date;

(2) U.S. patent application publication by patent application publication number, first named inventor, and publication date;

(3) Foreign patent or published foreign patent application by the country or patent office that issued the patent or published the application; the applicant, patentee, or first named inventor; an appropriate document number; and the publication date indicated on the patent or published application; and

(4) Non-patent publication by author (if any), title, pages being submitted, publication date, and, where available, publisher and place of publication. If no publication date is known, the third party must provide evidence of publication.

(f) Any third-party submission under this section must be accompanied by the fee set forth in § 1.17(p) for every ten items or fraction thereof identified in the document list.

(g) The fee otherwise required by paragraph (f) of this section is not required for a submission listing three or fewer total items that is accompanied by a statement by the party making the submission that, to the knowledge of the person signing the statement after making reasonable inquiry, the submission is the first and only submission under 35 U.S.C. 122(e) filed in the application by the party or a party in privity with the party.

(h) In the absence of a request by the Office, an applicant need not reply to a submission under this section.

(i) The provisions of § 1.8 do not apply to the time periods set forth in this section.

■ 8. The undesignated center heading before § 1.291 is removed.

■ 9. Section 1.291 is amended by revising paragraphs (b) introductory text, (b)(1), (c)(1) through (c)(4), and (f) to read as follows:

§ 1.291 Protests by the public against pending applications.

* * * * *

(b) The protest will be entered into the record of the application if, in addition to complying with paragraph (c) of this section, the protest has been served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible; and, except for paragraph (b)(1) of this section, the protest was filed prior to the date the application was published under § 1.211, or the date a notice of allowance under § 1.311 was given or mailed, whichever occurs first:

(1) If a protest is accompanied by the written consent of the applicant, the protest will be considered if the protest is filed prior to the date a notice of allowance under § 1.311 is given or mailed in the application.

* * * * *

(c) * * *

(1) An information list of the documents, portions of documents, or other information being submitted, where each:

(i) U.S. patent is identified by patent number, first named inventor, and issue date;

(ii) U.S. patent application publication is identified by patent application publication number, first named inventor, and publication date;

(iii) Foreign patent or published foreign patent application is identified by the country or patent office that issued the patent or published the application; an appropriate document number; the applicant, patentee, or first named inventor; and the publication date indicated on the patent or published application;

(iv) Non-patent publication is identified by author (if any), title, pages being submitted, publication date, and, where available, publisher and place of publication; and

(v) Item of other information is identified by date, if known.

(2) A concise explanation of the relevance of each item identified in the information list pursuant to paragraph (c)(1) of this section;

(3) A legible copy of each item identified in the information list, other than U.S. patents and U.S. patent application publications;

(4) An English language translation of any non-English language item identified in the information list; and

* * * * *

(f) In the absence of a request by the Office, an applicant need not reply to a protest.

* * * * *

§ 1.292 [Removed and reserved]

■ 10. Section 1.292 is removed and reserved.

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

■ 11. The authority citation for 37 CFR Part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 132, 133, 134, 135, 306, and 315.

■ 12. Section 41.202 is amended by revising paragraph (b) to read as follows:

§ 41.202 Suggesting an interference.

* * * * *

(b) *Patentee.* A patentee cannot suggest an interference under this section but may, to the extent permitted under § 1.291 of this title, alert the examiner of an application claiming interfering subject matter to the possibility of an interference.

* * * * *

Dated: June 21, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–16710 Filed 7–16–12; 8:45 am]

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H.R. 33/P.L. 112–142

Church Plan Investment Clarification Act (July 9, 2012; 126 Stat. 989)

H.R. 2297/P.L. 112–143

To promote the development of the Southwest waterfront in the District of Columbia, and for other purposes. (July 9, 2012; 126 Stat. 990)

S. 3187/P.L. 112–144

Food and Drug Administration Safety and Innovation Act (July 9, 2012; 126 Stat. 993)

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